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The Relation of the Individual to the State

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THE question of the proper relation of the individual to the state is perhaps the fundamental question of law and politics. The welfare of the individual, as well as the strength of the state, depends largely upon the nature of their relation. Indeed, nothing is more characteristic of the civilization of any nation than the manner in which that nation tries to solve this problem. Give the individual too much freedom and the state too little authority, and you have the lawlessness and anarchy which prevailed in Europe during the Feudal period, or in the American states under the Articles of Confederation, or in France during the Reign of Terror and the Commune of 1870. Give the state too much authority over the individual, and you have tyranny, apathy, lack of patriotism, and initiative such as prevailed in France under the system of Louis XIV. or in Prussia under the immediate successors of Frederick the Great, or in England when under the personal government of her Kings.

The nature of this relation between the individual and the state has changed from age to age, and has even varied decidedly in the same state from one period to another.

The predominant type of political organization in antiquity was the despotic state. Not only in the case of the early Oriental nations, but also in that of the democratic states of Greece and Rome, the state was omnipotent, while the rights of the individual were not recognized or guaranteed. The conception of individual liberty; the notion, that is, that there should be a sphere wherein the individual should be secure against an invasion of his rights, not only by other individuals, but even by the government itself,—this is a conception which was unknown to the ancients. Civil liberty, even to the Greeks and Romans, simply meant participation in the government. Greece and Rome had democracy, but not individual liberty in our present sense. The individual was completely merged in the

state and regarded it as his privilege as well as his duty to sacrifice his private interests for the interests of the state. Certainly the condemnation of Socrates shows clearly that among the Athenians freedom of thought and expression in our modern sense were not known. Even the Roman law, though it distinguished between public and private rights, did not extend the latter any further than to embrace the three rights of holding property, contracting a legal marriage, and the right of appeal from the decision of a magistrate to one of the public assemblies. The individual was known only as a subject of the state, not as a man. One reason why the ancients had no clear conception of individual liberty is because the notion of humanity as a whole did not dawn upon them until the time of the Stoics. The Greek looked down with disdain upon all non-Greeks, whom he called barbarians. Just so the Jew regarded the Gentiles, while the Roman designated all non-Romans with the word *inimici*, which meant both foreigners and enemies. Each nation shut itself off against its neighbors. This exclusiveness was intensified by the national character of each religion previous to the coming of Christ, who was the first religious teacher who addressed himself to all men rather than to one particular nation.

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But if Christ was the first to call himself "the Son of Man," and if Christianity thus became the first world religion, it must be remembered that the time was now ripe for just this conception of a common humanity, owing to the fact that race prejudices had been toned down and national barriers removed, first by the conquests of Alexander, then on a still larger scale by the formation of the Roman World-Empire. Along with this teaching that God had made of one blood all the nations of the earth went the kindred one of the infinite value of the human soul. Christianity has fostered both democracy and liberty. Every historical movement, such as the Reformation and the Puritan movement, which brought about a quickening of the Christian spirit, has also redounded to the assertion of democracy and freedom as regards social and political development. The other great influence operating along these lines appeared at almost exactly the same time. It was the Teutonic spirit. To these factors our modern individualism is largely due. The free institutions of civilized Europe and America are a development from the democracy and liberty of our Teutonic ancestors. The fundamental relationship of the Teutonic peoples cannot be too strongly insisted upon, nor must we forget that Teutonic kingdoms were also established in Spain, France, and Italy, even though the Teutonic influence in the latter was submerged by the subsequent ascendancy of the Roman influence. Everywhere the Latin influence, however, stands for authority, while the Teutonic stands for liberty. The early Teuton belonged first of all to himself, and only secondly to the state. He was first a man and then a citizen; while the Roman was first and last only a citizen. While Rome stands

for centralization, the Teutonic states are decentralized. Teutonic individualism runs rampant, and during the Feudal period degenerates into anarchy. Feudalism resulted in the disintegration of the state and the sovereignty of the individual. There probably never existed a class whose freedom was so unrestricted as was that of the Feudal lords of the Middle Ages.

Out of the chaos of the Feudal period there gradually emerged a centralized government, especially in England and France. While the Kings became strong enough to curb the nobles, to repress disorder and protect the life and property of their subjects, the growth of a royal despotism was unfavorable to the development of individual liberty. Thus King John, of England, was forced by the union of the barons and the common people to grant Magna Charta in 1215. This great document was not so much of the nature of a constitution as it was of a bill of rights which formulated and guaranteed the liberties of the subject. These rights were not new: they were the great principles of freedom which had been enjoyed by the early Anglo-Saxons. The formulation of these rights by Magna Charta, however, made them definite, and the signature of King John afforded a guaranty that they would be respected. Of course King John did not keep his promise and Magna Charta had to be reaffirmed again and again by him and his successors, yet a definite program had been laid down, which was never forgotten. The most important of the rights of the subject this document recognized are trial by jury; freedom against arbitrary arrest and imprisonment; the recognition that taxes cannot be imposed upon the people except by the consent of their representatives. For the next 450 years the constitutional development of England centers about the maintenance of these fundamental rights against the encroachment of the Kings. In the long struggle against the Stuarts a further extension of civil liberty is secured. To this period belongs the Habeas Corpus act, the Toleration act, and the right of freedom of the press. The Bill of Rights of 1689 may be considered to mark the close of the movement which Magna Charta had begun. The fundamental rights of English subjects had thus been formulated and guaranteed. The government had passed out of the hands of the King into that of the people. The establishment of constitutional government afforded the assurance that the rights of the people would no longer be endangered. Most of the rights which constituted the civil liberty of the English people were not secured by the French until their Great Revolution of 1789 occurred. In the movement for the enfranchisement of the individual, England had led the way. The free institutions of America are largely of English origin. The Virginia Bill of Rights of 1765 and the Bills of Rights of the various state Constitutions, as well as of our Federal Constitution, are a continuation of the movement which took place in England.

Our American Bills of Rights are, however, largely influenced by the abstract principles which belong to the theory of natural rights or the so-called rights of man. This theory played a great part in the Puritan and Whig movement in England and the New World. The political philosophy of Milton, Locke, Hobbes, Harrington, Rousseau, and many others is based on this theory. It became the predominant theory of the eighteenth century and of the American and French Revolutions, and is at the basis of the state papers of that age. The political philosophy of the natural rights school holds that the principles of law and government may be evolved from reason; that they are practically natural laws, applicable to all peoples at all times. Among the most important of these principles are the statement that all men are free and equal by birth or natural right; that the sovereignty is in the people; that the state is founded by a compact; that trial by jury, freedom of speech, freedom of the press, religious freedom, the right of petition, and the rest are rights of man or natural rights. These principles are expressed in the Declaration of Independence of 1776, in the Virginia Bill of Rights of 1765, and in many other similar documents, drawn up during the American Revolution. The French imitated our example,

and during their great Revolution, at the suggestion of Lafayette, drew up the famous "Declaration of the Rights of Man and of the Citizen" of the year 1789. This became the gospel of the new age and formed the program of the French Revolution.

The American colonists appealed to these abstract rights of man because they were being denied their rights as British subjects. They sought to justify their revolution by an appeal to the laws of nature. The use of the term "natural rights or rights of man" is, however, misleading and has now been discarded by the best thinkers. Such rights never existed *de facto*. Whatever rights we possess we enjoy not as men so much as citizens of a particular state. The whole movement which appealed to abstract rights was rather a contention for what ought to be than for what really existed. It was an ethical rather than a legal matter. It is for each state to determine through its proper organs, what rights its citizens are to enjoy. The state cannot permit them to appeal to any rights not granted by itself, for the state alone has sovereignty. Expediency alone must determine the measure of liberty which is granted the citizens. Whether this degree of liberty be large or small depends primarily upon the welfare of the state as a whole. In times of crisis an abridgment of the liberty of the individual may be necessary for the public good. In time of war censorship of the press or the abridgment of the right of public meeting may be necessary. The right to life may be taken away in the case of the criminal or the state may force the individual in time of war to be ready to sacrifice his life for his country. The state may tax or even take away private property by virtue of its right of eminent domain. The habeas corpus act may be suspended as it was by President Lincoln during the Civil War. The safety of the state comes first in all cases.

There has been during the last century a steady extension of the sphere of state activity and an attendant limitation of the rights of the individual. Early in the nineteenth century the so-called *laissez-faire* school of economists and political philosophers, with such men as Bentham, John Stuart Mill, Wilhelm von Humboldt, Herbert Spencer at their head, argued that the most perfect harmony existed between the interests of the individual and those of the state. They demanded that state activity be reduced to a minimum. They held that that state is best which governs least. According to them the state should simply play the part of a policeman, and protect life and property, while the individual should be given the greatest degree of freedom to do what seemed best to him. If he prospered the state must prosper, since it is composed of individuals. Even the establishment of schools, they argued, lay outside the field of legitimate state activity.

Our views on this subject have changed decidedly since the days of Mill and Humboldt. We realize that the state, by means of factory and sanitary legislation, must protect the weak against the rapacity of the strong. Even in the most individualistic countries, such as England and America, the field of governmental regulation and control has enormously increased. Many activities, such as the postoffice department, the parcels post, postal savings banks, the establishment of state universities, interstate commerce regulation, and the like, have been taken over by the state even though they might be successfully operated by individual enterprise. Government ownership of railroads, telegraphs, mines, forests, etc., is working so successfully in Germany and elsewhere that the socialization of such and similar activities bids fair to be carried out in America as well. In our cities, especially, government ownership has proceeded very far. Many American cities now own their gas, water, and electric-light plants. The tendency of the age is away from the old individualism to the socialization of activities. The great world war has proved how necessary it is for the state to concentrate its resources and organize them in a more effective way. Socialization has proceeded furthest in Germany, and has enormously increased the power of that country as compared with other more decentralized and individualistic countries. The war has demonstrated the weakness of indi-

vidualistic states. Individualism has been weighed in the balance and found wanting largely because it has left the possibility of war out of consideration. Even the need of greater efficiency in the competition between nations in peace time will make it necessary to adopt a greater concentration and socialization of national activities and resources. The older individualism did not even foster patriotism. It promoted selfishness. It insisted too much upon rights, and not enough upon duties. The motto for the future must be: "All for each and each for all." The state can do many things for the individual that he cannot do nearly so well for himself. The state must not remain indifferent to the great question of protecting the citizen against poverty, sickness, accident, and old age by means of social legislation and compulsory insurance.

Of course paternalism when carried too far is just as undesirable as unrestrained individualism. It is necessary to find the delicate balance between the liberty of the individual and the sovereignty of the state. As Macauley says: "Let us shun extremes, not only because each extreme is in itself a positive evil, but also because each extreme necessarily engenders its opposite. If we love civil and religious freedom, let us in the day of danger uphold law and order. If we are zealous for law and order, let us prize, as the best safeguard of law and order, civil and religious freedom." What Canning said in regard to British politics applies as well to American politics: "I consider it to be the duty of a British statesman in internal as well as external affairs, to hold a middle course between extremes, avoiding alike extravagances of despotism, or the licentiousness of unbridled freedom,—reconciling power with liberty."

The danger to our liberties to-day is not so likely to come from the state or some despotic ruler as from the weakening of a love of liberty and of the sense of justice in the minds of the people. "Both liberty and property are precarious," says Junius, "unless the possessors have sense and spirit to defend them." We must not imagine that our Bills of Rights will serve as bulwarks of our liberty if we have lost our spirit of independence. Buckle's remark applies with great force to our conditions: "It is not by the wax and parchment of lawyers that the independence of men can be preserved. Such things are mere externals; they set off liberty to advantage; they are its dress and paraphernalia, its holiday suit in times of peace and quiet. But when the evil days set in, when the invasions of despotism have begun, liberty will be retained not by those who can show the oldest deeds and the largest charters, but by those who have been most inured to habits of independence." Freedom is neither won nor can it be preserved by any charter. It must be won and it must be fought for to be preserved. The manifestations of tyranny are often very insidious. We need fear no Kings in America, but we must fear ourselves. Are we as worthy of our free institutions as were our fathers? We have freedom of the press, but the press itself has become an instrument of oppression. We have free schools, but our educational institutions themselves do not value freedom of thought, for they have expelled scholars who had the courage of their convictions. Our churches are free from domination, but they themselves have forced out their best men as heretics. The worst tyranny after all is the tyranny of the crowd, the tyranny of majorities, the tyranny of public opinion.

We have no inquisition to-day, but we are ridiculing and browbeating men for having opinions of their own. We are forcing everyone into the Procrustes bed of uniformity. Liberty is defined by Lord Acton as "the assurance that every man shall be protected in doing what he believes his duty against the influence of authority and majorities, custom and opinion." Does this liberty prevail to-day, or is it still a dream?

George L. Scherger.

The State and the Individual

BY PAUL CARUS

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Author of "The Nature of the State" and other works

THE problem of the state and the individual is much more important than it might seem to the average man of to-day, and even professional men concerned with inferences to be drawn from the several theories proposed as a solution rarely appreciate the full significance of the subject. Allow me, therefore, to point out of what fundamental importance and how indispensable it is to know what an individual is, and what place he takes in the Constitution of the state.

There are philosophers, ethicists, and social reformers who have been called "individualists." They regard the individual, or rather the human personality, as the climax of existence, and endow it with all the rights and privileges to which a creature made in the image of God naturally seems to be entitled. But there are others who recognize the authority of the state as a higher power, to which the individual owes absolute submission and obedience, even including, if need be, the sacrifice of life. Between the two extremes there are many intermediate views which make greater or less concessions to either side of the contrast.

There are anarchists who deny the right of government and would allow to every individual person independence in his own sphere, and there are socialists who would demand submission of everyone to the regulations made in the interest of society. The natural growth of mankind is actually a development of these two principles, side by side, in approaching the establishment of a social state which would assure the welfare of society by curbing the appetites of those who try to live upon their fellow citizens, or tyrannize over those lacking the power of resistance, together with the assurance of giving as much elbow room as possible to every individual citizen.

First of all we must investigate the nature of an individual and its origin, and then the nature of society, which when duly organized becomes in the course of human development what we call a state.

What is the difference between an animal and a man? Every animal is an individual, but the human individual, being endowed with speech, becomes a person; for speech gives rise to the power of thought and judgment and responsibility.

Here lies the foundation of any theory of the nature of both human individuality and the state or (to use the more general conception) of society. Thought, judgment, and responsibility are products of language, and language is the result of social intercourse.

Which was first, the chicken or the egg? This is an old conundrum, and the answer is that the chicken and the egg developed together. First there was animal life in a plastic state, and this life reacted on its surroundings. The reactions of life left traces and built up the constitution of a living organism. The impressions of rays of light reacted upon sensitive spots which gradually took on the shape of ocelli and finally turned into eyes. The eye is an accumulation of a definite kind of life function, and all other organs of an organism originated in the same way.

The egg represents the totality of the organism. It has developed as an organ of its own. All the reactions of the whole individual were registered as a kind of summary of its memories for reproduction, and the egg enables the organism to repeat its functions in a new course of life. So, in the beginning

there was neither the chicken nor the egg, but the reactions of life in the special domain of those feathered creatures that we may comprise under the name of fowls developed the egg-laying chicken.

The solution of the quandary as to "Which was first, the individual or the state?" is similar. Our answer is, "Neither. Both developed side by side."

The human individual is a product of social intercourse. In the beginning of human development there were gregarious creatures with common needs, and the history of this kind of life produced at the same time society, and members of society or individuals.

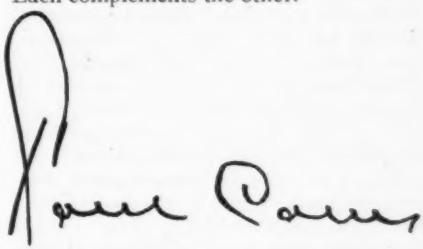
In the animal world the communal life is of a very primitive kind; nevertheless it is not entirely absent. A pack of dingoes has a communal interest, and it is this communal interest which guides them in hunting their prey, although it is extremely limited and does not rise to the dignity of an ethical instinct. Ants and bees appear to range higher, but a close consideration of their communal life leads us to the conclusion that, properly considered, it is the hive that is the animal, and not the bee. The bee is not an individual. If isolated from the hive, she will die. She cannot live by herself. She is a member of the hive, and not an individual in the proper sense of the term.

Now shall we not come to the same conclusion with regard to man? Is not man, too, absolutely dependent upon society? The Crusoe stories have attempted to treat the problem as to what man can do in loneliness on a desert island, but the solution has not been worked out seriously. The real solution must lead to the conclusion that man removed from his social surroundings can as little prosper and develop his humanity as a fish can live out of water.

It is the common interest of society which produce the need of intercommunication. The need of intercommunication produces language, language produces thought, thought produces judgment, and judgment produces the feeling of responsibility with its train of social ideals. Man is the product of social intercourse; a group of men constitute society, and society produces human individuals with all their intellectual and moral characteristics.

One more word about the nature of the state. A state is society legally and definitely organized, and the character of the organization is of the utmost importance. It is not indifferent whether a state is a monarchy or a republic; and the detailed features of a state, its traditions, the established habits and views of its citizens, are as important as the character of a man of an individual personality. It is wrong to think that the state is merely, as Rousseau said, a social contract, and that this contract can be dissolved at the will of a majority vote. The individual has been born and educated, and has worked out his personality in a definite way. The state has originated and grown historically, and likewise possesses a definite character. There is only this difference, that a state is a superpersonal type of being, and its citizens owe allegiance to it, as much as our hands and feet and all the cells that constitute our body are bound to support our existence, and possess no rights that militate against the organism of which they are parts.

Life is a mysterious function, and all phenomena of nature display contrasts. The contrast of the highest life which appears in humanity is that between the human individual and human society. They are in many respects very different, and yet we cannot understand them except as we compare and contrast them. Each complements the other.



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*The Decline of Personal Liberty in America**

BY HON. EDGAR MONTGOMERY CULLEN

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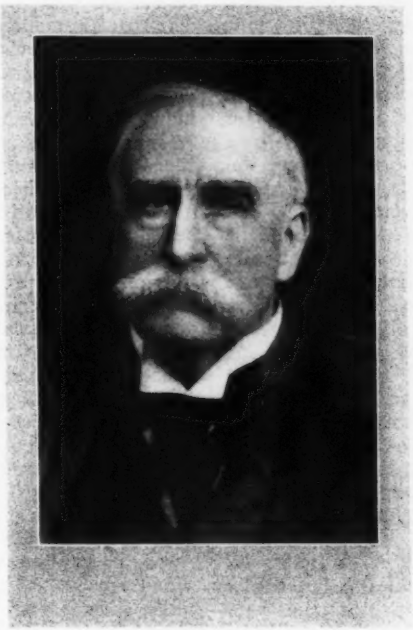
IN A RECENT debate in the House of Representatives, between two well-known members, which involved their respective positions on a proposed amendment to the Federal Constitution, prohibiting the manufacture and sale of intoxicating liquors, it was said by the gentleman who favored prohibition: "I ask if there is any other question you can name that is of greater public moment than the question whether our people are to be forever debauched . . . The liquor interest on one side, and the temperance, prohibition, and moral forces on the other, have made it a national question, and he cannot escape the fact." Whether the question is a national one or not, in my judgment, there is a question of far greater moment. That is, whether individual liberty is still to obtain in America.

It may seem remarkable that less than one hundred and forty years after the Declaration of Independence and twelve years less than that time after the adoption of the Constitution of the United States, the question I have propounded should be still open for discussion. Nevertheless, unless I am utterly mistaken, there is now a strong tendency in courts, in legislatures, and, worst of all, in the people themselves, to disregard the most fundamental principles of personal rights. Judicial decisions are made, statutes are enacted, and doctrines are publicly advocated, which, when I was young, would have shocked our people to the last degree. In those days liberty was deemed to be the right of the citizen to act and live as he thought best, so long as his conduct did not invade a like right on the part of others. To-day, according to the notion of many, if not most people, liberty is the right of part of the people to compel the other part to do what the first part thinks the latter ought to do for its own benefit. It has been said that the great misfortune of the day is the mania for regulating all human conduct by statute, from responsibility for which few are exempt, for those who resent as paternalism or socialism legislative interference with their own affairs are often more persistent in the attempt to regulate the conduct of others. That there has been of late years a reaction from the faith in individualism, which was almost universal in free countries in the middle of the last century, is certain. The consideration, however, of the respective merits of individualism or collectivism, or an inquiry into the proper limits for the application of the doctrines of either faith, would raise entirely too many and too broad questions to be the subject of discussion in an address like this, and that discussion I shall not essay, though I am frank to admit that having been brought up in the substantially universally accepted faith in the maxim that "Who is governed least is governed best," it is hard for me, at my age, to devest myself of my early predilections. I shall confine myself to calling your attention to certain things which I think might well excite alarm even in the minds of those whose faith in the righteousness and efficiency of state action is the greatest if they still have some regard for private rights. . . .

*From address delivered before the New York State Bar Association.

Liberty of the press as defined by Alexander Hamilton, whose definition was approved by Chancellor Kent, writing for the supreme court of this state, of which he was then a member, consists "in the right to publish with impunity truth with good motives and for justifiable ends, whether it respects government, magistrates, or individuals." (People v. Croswell, 3 Johns. Cas. 394.) The Constitution of the state of Minnesota ordains: "The liberty of the press shall forever remain inviolate, and all persons may freely speak, write, and publish their sentiments on all subjects, being responsible for the abuse of such right." The legislature of that state enacted a statute in relation to the execution of capital sentences, which prescribed: "No account of the details of such execution beyond the statement of the fact that such convict was on the day in question duly executed according to law shall be published in any newspaper."



HON. EDGAR M. CULLEN

In the case of State v. Pioneer Press Co. 100 Minn. 173, 117 Am. St. Rep. 684, 110 N. W. 867, 10 Ann. Cas. 351, 9 L.R.A.(N.S.) 480, the defendant was indicted and convicted of publishing an account of an execution. The terms of that account do not appear in the report of the case, but its general character can be gathered from a statement in the opinion of the court: "The article in question is moderate, and does not resort to any unusual language, or exhibit cartoons for the purpose of emphasizing the horrors of executing the death penalty." Despite this, the learned court held: "But if, in the opinion of the legislature, it is detrimental to public morals to publish anything more than the mere fact that the execution has taken place, then, under the authorities and upon principle, the appellant was not deprived of any constitutional right in being so limited." In answer to the appellant's argument that there were no constitutional limitations upon the press unless the subject-matter be blasphemous, obscene, seditious, or scandalous in its character, the learned court said: "This is altogether too restricted a view. The principle is the same, whether the subject-matter of the publication is distinctly blasphemous, seditious, or scandalous, or of such character as naturally tends to excite the public mind and thus indirectly affect the public good." With the greatest deference to the learned court, I insist that the doctrine asserted in this opinion is fatal to the liberty of the press. If it is a correct exposition of the law, the famous decree of the Star Chamber forbidding unlicensed printing, held up to execration in free countries for centuries, has been the subject of unmerited obloquy.

Surely, if government can prohibit the publication of anything that tends to excite the public mind, it is much wiser that nothing should be published that has not been properly censored. I believe that on many subjects it is right that the public mind should be excited, despite of whatever disadvantage may come from that condition, and I had supposed that it was the inalienable right of the press to excite the public on the subject of any

wrong, so that that wrong might be redressed. Personally, I believe in capital punishment, but many people entertain a contrary opinion. If an execution is, in truth, attended with horrors, the opponents of capital punishment have an undeniable right to describe those horrors as an argument against the infliction of the death penalty. Moreover, may not one who believes in capital punishment, but is shocked at the method in which it is executed, state the facts, so that the method may be changed? Or, if the scandal in the execution be caused by the incompetency, brutality, or intoxication of the officer charged with carrying out the sentence of the court, may not the facts be published for the very purpose of exciting the public and assuring the removal or punishment of the delinquent official? How can redress against misgovernment be effectually obtained except by exciting the public mind? Further comment on this legislation would seem unnecessary.

By the same learned court it has been recently decided that an action will lie against a rich man who opens a barber shop with the motive, as charged in the complaint, of injuring the plaintiff, a barber in business at the time, and not for the sake of the defendant's own profit. (Tuttle v. Buck, 107 Minn. 145, 131 Am. St. Rep. 446, 119 N. W. 946, 16 Ann. Cas. 807, 22 L.R.A.(N.S.) 599.) If the commission of an act, unquestionably lawful, is to render a person liable to respond in damages to any competitor affected thereby, by subjecting the motive of the actor to the scrutiny and determination of a court or jury, there is very little safety left to the individual in the ordinary pursuits of life. Nor do I think that ultimately the decision will help the poor man. If the defendant's action in the case referred to hurt the trade of one barber it certainly gave employment to another. An automobile manufacturer has recently admitted his employees to share in the profits of his business, to the extent of millions. If the doctrine of the case referred to is sound, I do not see why other manufacturers of motor cars may not restrain the action of the generous employer on the claim that his real motive is not to benefit his employees, but to injure his competitors in trade, by exciting discontent among their workmen leading to strikes. Of course, the plaintiff must satisfy the court or jury as to the motive of the party sued, but it is an easy transition from the premise that the defendant, for some reason, ought not to have taken the action complained of, to the conclusion that therefore he must have acted with a malicious motive.

Looking in the dictionaries of recent years we find a new word, "eugenics," defined as the science of improving the human race by securing better offspring. It is urged that for many years it has been the constant endeavor to improve the breed of animals, but that no effort has been made to improve that of human beings. The professors of the new science seek to accomplish this result by restraining the procreation of offspring by persons suffering from transmissible diseases or physical defects. So far as they endeavor to arouse individual conscience on the subject, doubtless, their efforts are laudable, though there seems to be great difference of opinion among experts upon the question of what physical weaknesses are the subject of inheritance by children. But, in accord with the fashion of the day, these gentlemen were not satisfied to advance their cause by argument, but have sought and obtained legislation, in at least two states, which forbids marriage without the certificate of a physician to the physical well-being of the parties. If marriage were a necessary condition precedent to the procreation of offspring, there would be some sense in the legislation, however objectionable on principle it may be, but, as it is not, the legislation is simply silly. Restraints on marriage are not new in the world. The only result has been, where such restraints have prevailed, that men and women have formed unions without the sanction of either law or religion, and, to the credit of human nature, they have, as a rule, been as constant to the obligations of those unions as if there had been legal marriage. The continence of the parents, however, was unable to save their innocent offspring from the stigma of illegitimacy. If the legislation spoken of had this result, it

would be wicked as well as silly, but, as it is so easily evaded by going to another state to perform the marriage ceremony, I have characterized it only as silly.

In the domain of commercial and industrial industry have been the greatest attempts to restrain individual activity and liberty. The members of nearly every vocation have sought, and, often secured, in their own interest, legislation which invades the rights of the rest of the community, and, at times, the rights of some of their own members. We all know how much of the so-called labor legislation has assumed to forbid the pursuit of particular trades except to persons who have passed examination and obtained licenses, the real object of such legislation being not to protect the public, but to limit the number who could follow the particular trade. Even the barbers had at one time a statute forbidding anyone to cut hair or shave customers unless he had been examined by a board of examiners, composed in part of barbers, and admitted to practice. That law no longer appears on the statute books. But this disposition usually termed trade unionism, and justly condemned, is by no means confined to the trades. The same spirit seems to prevail in nearly all vocations, and our state has been one of the worst of offenders in this respect. The famous tenement house cigar act (Re Jacobs, 98 N. Y. 99, 50 Am. Rep. 636) prohibited the manufacture of cigars in any tenement house. As pointed out by the courts, its provisions were such as to show plainly that it was in no sense a statute for the protection of health, but enacted solely for the benefit of large manufacturers, who sought to stifle competition. Everyone familiar with the public affairs of that day knows that this was the true purpose of the act. When oleomargarin was first made, the farmers of the state, not content with legislation to prevent fraud on the public in passing off the article as butter, obtained the enactment of a statute which absolutely prohibited its manufacture, though it was indisputably shown that oleomargarin was a wholesome article of food. (People v. Marx, 99 N. Y. 377, 52 Am. Rep. 34, 2 N. E. 29.) Some ingenious and energetic storekeeper sought to increase his sales by giving prizes or premiums to purchasers of goods in excess of a certain quantity or value. His plan must have been successful, since forthwith his business rivals had a statute passed forbidding giving a prize on the sale of goods, and making the act a misdemeanor. The statute was sought to be upheld on the claim that the gift of prizes induced customers to buy more than they needed and to spend too much money, though how this justified interference by the state I am at a loss to imagine. Of course, the real object of the statute was to stifle an ingenious method of doing business, in the interest of rivals in that business. (People v. Gillson, 109 N. Y. 389, 4 Am. St. Rep. 465, 17 N. E. 343.)

The local storekeepers in some small places thought their business injured by transient retailers, who advertised their goods as bankrupt or assigned stock, or as damaged by fire. So they had a statute enacted which required transient dealers, in cities of the third class, so advertising, to take out licenses for the privilege of selling their goods, the cost of which to be fixed between twenty-five and one hundred dollars. That the statute was solely directed against the advertising was plain from the fact that its requirements applied only to itinerant merchants so advertising, and this, whether the advertised statement was true or false, while others not advertising, were exempt. (People ex rel. Moskowitz v. Jenkins, 202 N. Y. 53, 94 N. E. 1065, 35 L.R.A.(N.S.) 1079.)

Nor are the professions free from the same spirit. Surely, there is no nobler, none so charitable and unselfish, profession as that of the physician. Yet, the persecution which some of the physicians seek to inflict on the Christian Scientists is discreditable. Personally, when ill, if compelled to make a choice, I prefer the attendance of the physician to that of the minister, but others may entertain a different view. It took centuries of time and untold human suffering to establish the right of a man to be saved or damned in the next world in his own way. And the right of an adult, sane, person to be cured or killed in this world, in his own way, seems to me to be equally as great,

unless his disease, being contagious, endangers others, and even in that case it is difficult to see how the attendance of the Christian Scientist can increase the danger. Doubtless, the requirements of technical education and skill prescribed as conditions for a license to practise as a physician are proper. In default of such requirements we would be subject to be imposed upon by impostors and charlatans. But no one, however, can be deceived by the Christian Science reader except as to the extent of the special intervention of the Deity in human affairs. As to that, a man has a right to believe what he chooses, and the further right to act on his belief. In all Christian churches prayers are offered for the recovery of the sick, and all decent Christians, Friends possibly excepted, believe in supporting their clergymen. The Christian Scientist has exactly the same right to be paid for his service. The sect seems to be unpopular and to have few defenders. That is only a greater reason why we should see to it that its rights be respected.

At this point permit me to digress a moment to call attention to an evil which is closely akin to the subject of my address, the disposition to make all human shortcomings crimes, and subject to excessive punishment. Everyone familiar with the history of the subject is shocked at the brutality of the old English penal law, which had over two hundred capital felonies. The list grew to that excessive number gradually but continuously by successive statutes. When any evil was discovered it was made a felony without the benefit of clergy. The spirit that prevails at the present time is exactly the same as that that led to the English law. In this state we have now over two hundred felonies, though none capital except treason and murder, and over double that number of misdemeanors. Counting crimes as given in the index to the Penal Code, their number is nearly twice as great as that stated, but as some are only duplications I have reduced my estimate that it may be well within the limits of the fact.

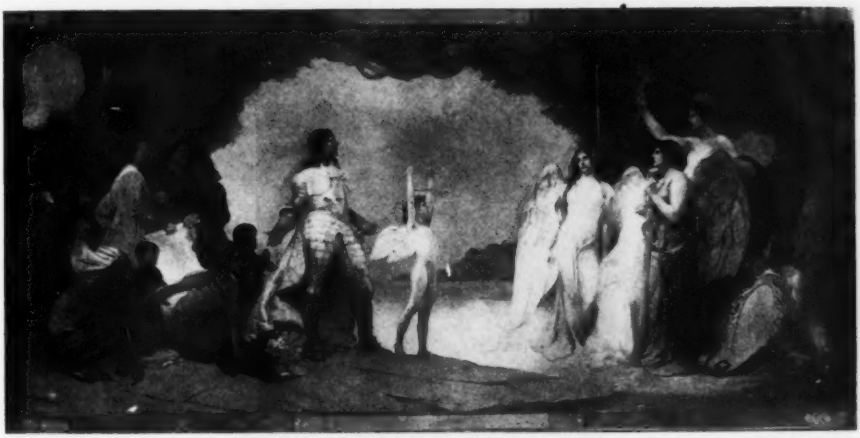
No trade or calling seems so limited, no society or association so insignificant, the advocates of no hobby or nostrum so few or so wanting in influence, as to be denied the privilege of having a new misdemeanor created. For years, feeding or sheltering sparrows constituted a crime in this state, punishable by imprisonment not to exceed a year or fine not in excess of $500 or both. That law no longer disgraces our statute books. But even to-day we find notices in the street cars that anyone spitting on the floor is subject to the punishment I have mentioned. Spitting in public places is, doubtless, a dirty habit and endangers the health of others. It may well be punished by proper penalties, but it seems unreasonable that an offender should, for such an offense, be liable to a year's imprisonment and a fine of $500, the latter, if not paid, to be served out at the rate of a dollar a day. The fact that no court would impose such a penalty only emphasizes the impropriety of the law. But that is the standard punishment for misdemeanors, and misdemeanors have become so common that there is now speculation among the curious as to how many the average, decent citizen will ordinarily commit in a day.

It is true that many statutes to which I have referred have been held invalid by the courts, but that does not go to the root of the evil, which lies in the attitude of the public towards these violations of private right, that of approval by part of the community, of indifference on the part of the rest. . . .

I have now recited a number of cases in which, in my judgment, clear violations of personal liberty have been either accomplished or attempted. Many others might be given and, possibly, those which I have narrated may not be the most flagrant. But they are fair examples of the tendency of the times. I must not be misunderstood. I do not criticize laws for safeguarding the persons of operatives in the various callings, nor for the protection of the health, whether of the working classes or of others. It is also apparent that the present concentration of numbers of people in a single city, to an extent unknown and unexpected half a century ago, requires police regulations or restrictions of individual rights that would have been unjustifiable at an earlier period. When

we have twelve-story buildings with only one-story streets it is plain that mere numbers would prevent all locomotion on the streets unless locomotion was strictly regulated. Density of population, doubtless, requires new regulation of private rights in other respects. Of all these I approve, but I protest against two tendencies of the times. First, to disregard as legal technicalities, on the plea of necessity, the constitutional safeguards for the security and the protection of the individual citizen as against the government; and, second, to restrict the liberty of action of the individual, when the effect of such action is confined to himself, except in the sense so often urged, that the community is interested in whatever concerns the individual, in which there is no force, as the community is simply the aggregation of individuals. Nor, do I complain of democracy. On the contrary, if I must be deprived of my liberty and rendered miserable, I am sufficient of a utilitarian to desire that my misery shall contribute to the happiness of the greatest number. But I protest against being compelled to surrender my liberty at all.

To those, if there are any such at this day, who share these views, I have but this to say, that the only way in which our own conduct can be secured against the inroads of paternal or socialistic government is to be alert to protect the conduct of others and to condemn violations of private rights equally whether the violation is of our rights or of those of others.



Mural painting in Court House, Baltimore, Md., representing allegorically the Edict of Toleration of Lord Baltimore.

The provisions of the charter of Maryland, obtained by Lord Baltimore from Charles I, were the most liberal and ample which had ever received the sanction of the English government. Christianity was declared to be the religion of the state, but no preference was given to any sect or creed. The colony was planted on the broad basis of religious toleration and popular liberty.

Advertising

BY SAM M. WOLFE

Of the Anderson (S. C.) Bar

EORGE FITCH, the mirth-making satirist, is dead, poor fellow; and even had I the aspiration, I haven't the ability to succeed him. But I am just enough Quaker to respond sometimes to an impulse, and this time, it is to write a "pocket essay." And my subject is: "Advertising."

Now, being a lawyer, one would naturally suspect me very ignorant of my subject, but don't be deceived, for while the reputable lawyer is ethically bound to refrain from advertising, he is an adept at the art and a past master in putting it to account. Of course he does not insert it in the column marked, "Advertisement," remembering that a rose with any other name smells just as sweet. And he doesn't word it just this way: *Fees extracted without pain, and without the client knowing for what they were extracted. Beware of imitators and charlatans, there is but one, the original, etc.*, however much his inclination might be to do so; but he lets the affable reporter write the "story," and then coyly suggests the connection of his distinguished firm. This goes as "news," and costs him not a penny. Then the time comes for the trial of the case, but a continuance is urged and granted, and the case has its periodical airing as one of the "big cases on the calendar, or docket," until it is about threadbare, and then comes the announcement that the "big case" has been settled. But how? Oh, that is immaterial, and a sequel that is seldom known except to the lawyers themselves, who retire to a vacant jury room, pass around a friendly nudge, and light their cigars.

SAM M. WOLFE

Then too, there is the proverbial Sergeant of the Law of the Canterbury Tales, who is the busiest man in all the town and yet busier than he really is. But it all goes to show that the same nature that causes the cock to grow a comb and the peacock to grow a variegated tail causes the lawyer to want to advertise, and he is going to do it, ethics to the contrary notwithstanding. The tendency, as might be expected, is more manifest and less tactfully concealed in the younger members of the profession. Remembering the admonition

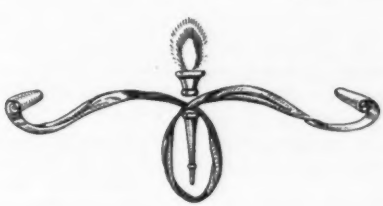
of Somebody on Successful Advocacy, to wit, "Try your cases," and letting enthusiasm get the better of accuracy, and interpreting the *dictum*, "Try cases," and later, "Try what may only appear to be cases, and at all hazards," a member of a certain bar appeared as counsel for defendant, charged with assault and battery with intent to kill, a felony under the law of the state in which the young man essayed to practise, but under an indictment charging the crime, the jury could convict of simply assault and battery, and this was a misdemeanor and carried with it a modicum of punishment. The prosecuting attorney, having investigated the case, announced to the court when it was called for trial that he considered it one of so little consequence that he had decided to enter a nol pros. Scarcely had this announcement been made when the defendant's young counsel sprang to his feet in bitter and vehement protest at the prosecuting attorney's audacity, asserting that the defendant was amply and ably represented, and demanded his constitutional right of being vindicated by a jury of his peers.

The judge smiled behind his palmetto fan, and the other lawyers about the bar snickered and coughed. Needless to say, the crowd of spectators for the time being were unable to intelligently appreciate just what had caused the flurry, but got the impression that the young lawyer had triumphed in a point for the defense. And the case was proceeded with.

Defendant's counsel made a glowing speech. He harked back to the fathers. He recited the Magna Charta, the Decalogue, and the principles enunciated by Justinian, with no apparent point especially, other than to show the gaping throng and wearied judge that he knew whereof he spake, and, as a peroration, quoted the thirteenth chapter of First Corinthians. He had consumed his statutory time for argument some minutes before, and had been permitted to continue only through the indulgence of the court. Reluctantly he returned his watch to his vest pocket and sat down with an air of having surpassed Moses, Justinian, or Saul of Tarsus. And, after paying marked indifference to the five-minute talk of the prosecuting attorney, awaited with confidence the verdict of acquittal for his client.

But the verdict was not an acquittal; on the contrary, it was just a plain, old-fashioned verdict of "guilty;" guilty of the offense as charged, and the pitiable defendant was given his sentence accordingly.

Does it pay to advertise? Not unless there is headwork behind it. And certainly not at the expense of your client.



Growth of Anti-Liquor Legislation

BY LEE J. VANCE
Of the New York Bar

[Ed. Note.—Earlier discussions of this subject by Mr. Vance may be found in July, 1914, and February, 1915, numbers of Case and Comment.]

ANY account of the growth of liquor legislation would be incomplete without some notice of the rise and progress of the drink reform movement in this country. Reformers are said to create issues, but it is no less true that issues give to legislation their color and character.

The temperance movement in its evolution presents four different issues.

The first stage or issue is, as the name implies, temperance or moderation in the use of drink.

The second stage is total abstinence from all intoxicating liquors.

The third stage is prohibition with decline of personal liberty and destruction of property rights.

The fourth stage is propaganda by those who make it a business to agitate for new liquor laws and for more anti-liquor legislation.

This last-named stage is now most in evidence.

Rapid Growth of The Early Temperance Movement.

About one hundred years ago, or early in the nineteenth century, earnest and eloquent men in the community began to declaim and organize against the evils of intemperance and drunkenness. Even allowing for more or less exaggeration, no doubt there was too much hard drinking in those days.

What is regarded as the first temperance organization in this country, the Union Temperance Society, was formed in Saratoga county, New York, in 1808. The plain purpose of this society is set forth in the following extract from the constitution, which was signed by 43 members:

> Art. IV. sec. 1. No member shall drink rum, gin, whisky, or any distilled spirits, or composition of the same, or any of them, except by advice of a physician, or in case of actual disease (also excepting at public dinners), under penalty of 25 cents; provided that this article shall not infringe on any religious rite.
>
> Sec. 2. No member shall be intoxicated under penalty of 50 cents.

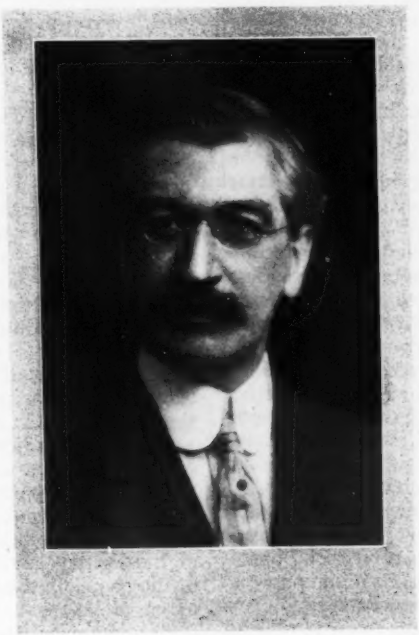
According to the sympathetic historian of the movement, among the "religious rites" excepted in the constitution of this temperance society, at which a member might be drunk without loss of membership, provided he paid 25 cents for the privilege, were funerals, weddings, dedication of churches, and the like.[1] He adds that anniversaries, civic festivals, military displays, municipal elections, and all public and social assemblies, "were nothing without plenty of liquor."

In 1813 the Massachusetts Society for the Suppression of Intemperance was organized "to suppress the too free use of ardent spirits and its kindred vices, and to encourage and promote temperance and general morality." The American Temperance Society, with Governor Marcus Morton as president, was formed in Boston in 1826; the New York State Temperance Society, and the Connecticut Temperance Society with President Day of Yale at the head, in 1828.

From this time on the temperance movement made rapid progress all over the country, in the number of organiza-

[1] The Temperance Reform, by Rev. W. H. Daniels, p. 54.

tions, in members, and in influence. In 1832 General Lewis Cass, Secretary of War, issued an order "forbidding the introduction of ardent spirits into any fort, camp, or garrison in the United States."[2] The Secretary of the Navy, Levi Woodbury, likewise discouraged the use of ardent spirits or grog among the seamen, and directed that coffee, tea, sugar, and money be offered in their place. The first national temperance convention was held for three days in Philadelphia from May 24 to 27, 1833. Four hundred and forty delegates were present, representing nineteen states and one territory. The convention came to two conclusions: (1) "That the traffic in ardent spirits to be used as a beverage is morally wrong, and ought to be universally abandoned;" (2) "that an advance in the cause is demanded, and that it is expedient to adopt the total abstinence pledge as soon as possible."



LEE J. VANCE

The total abstinence pledge was not adopted, however, until three years later when, at the second national temperance convention in 1836, it was resolved to exclude all intoxicating liquors. Previous to that time, as a prominent temperance reformer alleges, all except a few radicals regarded beer and wine as temperance drinks.[3]

Thus, the temperance movement started here,—as it has started in every age and in every country,—not against the use, but the abuse, of drink. The next step was against the use of ardent spirits, or distilled liquors. This was followed by the "teetotal" movement against all intoxicants.

The authorities on the subject say that in 1833 there were more than 5,000 temperance societies in the United States, with a membership of 1,250,000; that 4,000 distilleries had been closed and 6,000 merchants had given up the sale of ardent spirits.[4] While the figures given cannot be verified, yet they give some idea of the size and extent of the temperance movement eighty years ago. In 1831–32 that brilliant student of democracy in America, M. Tocqueville, visited this country. Being one of the keenest of observers, he noticed, with surprised amusement, that a big army of men had solemnly agreed to stop drinking, and had formed an immense number of temperance societies all over the land. His comments on this method of moral reform are worth quoting:

"The first time I heard in the United States," says M. Tocqueville, "that a hundred thousand men had bound themselves publicly to abstain from spiritous liquors, it appeared to me more like a joke than a serious engagement; and I did not at once perceive why these temperate citizens could not content themselves with drinking water by their own firesides. I at last understood that these hundred thousand

[2] As a substitute for the ardent spirits issued previously, the order stated that "8 pounds of sugar and 4 pounds of coffee will be allowed to every one-hundred rations."

[3] Encyclopedia Americana, art. "Temperance" by Rev. Wilbur F. Crafts.

[4] Daniel's, The Temperance Reform, p. 59; Morewood in his "History of Inebriating Liquors," p. 341, states that in 1834 the number of temperance societies had increased to 7,000, while about the same number of merchants had ceased to sell ardent spirits.

Americans, alarmed by the progress of drunkenness around them, had made up their minds to patronize temperance. They acted just in the same way as a man of high rank who should dress very plainly, in order to inspire the humbler orders with a contempt of luxury. It is probable that, if these hundred thousand men had lived in France, each of them would singly have memorialized the government to watch the public houses all over the kingdom." [5]

Clever, keen-witted lawyer, and far-sighted publicist that he was, M Tocqueville could hardly have imagined that the drink reform movement, which he lightly considered "a joke," would ever become a "crusade" against the personal liberty and the property rights of our citizens. But he clearly saw and pointed out at some length dangers that come from shifting and temporary majorities.[6]

While a great deal of our liquor legislation fairly well illustrates evils of majority rule, yet it also illustrates the tyranny of the minority. It shows that a small, compact, and aggressive faction in close political contests and claiming to hold the balance of power, can secure by threats and organized propaganda, liquor legislation which the majority of the community neither asked for nor wanted. The results are, the nonenforcement and the open or secret violation of anti-liquor laws which are not supported by public opinion or sentiment.

During the next ten years (1835–1845) the temperance movement continued to make great headway. Many new societies and orders were formed; tens of thousands took and signed the temperance or total abstinence pledge. The Washington Total Abstinence Society was organized in a tavern, in Baltimore, in 1840. The Washingtonians, as the members were called, formed the largest and leading temperance body for some years. The Order of the Sons of Temperance was established in New York city in 1842. It had a solemn initiation ceremony and religious ritual. A branch society was called the Order of Templars of Honor and Temperance. The independent order of Rechabites, which was organized in England in 1835, was introduced into the United States in 1842, and soon claimed 100,000 members.

Hardly less important than the many temperance organizations of different kinds was the great army of lecturers and orators who went up and down the land preaching in the pulpit and on the public platform temperance reform, organizing branch societies, and getting thousands to sign the pledge. The three leading pleaders of this time were: John H. W. Hawkins, John B. Gough, and Father Mathew. They were no doubt largely responsible for creating and shaping public sentiment and opinion which found further expression in new anti-liquor laws.[7]

Meanwhile radical temperance reformers were not satisfied to use merely moral force. That seemed to be too slow to suit their purposes; they wanted quick results. And so they invoked the force of the written law to make and keep all of the people in the community sober and temperate.

The municipalities and states, particularly in New England, began to have new liquor laws. Take, for example, the state of Massachusetts. After having been satisfied with its license laws for forty-six years, the Massachusetts legislature revised the statute of 1786 in 1832. Four years later, or in 1836, it was again amended, and in 1838 there was further change.[8]

[5] Democracy in America (Spencer's ed.) vol. II. p. 118.

[6] M. Tocqueville's views of the tyranny of the majority have caused no end of discussion. James Bryce seems to think that the more glaring evils of majority rule have so far been escaped or avoided in our democracy; but he admits that this does not hold good as regards special and class legislation, including anti-liquor legislation. See The American Commonwealth, part IV. entitled Public Opinion.

[7] Hawkins, a reformed drunkard, worked for the Washingtonians for eighteen years (1840–58).

Gough, also a reformed drunkard, was converted at a Washingtonian revival in Worcester, Massachusetts, in 1842. He was an actor, singer, story-teller, and ventriloquist. Gough used his talents with wonderful effect, and could play upon the feelings and emotions of his hearers so that strong men wept and begged to be saved.

Father Mathew began his great work in Cork, Ireland, in 1838, and by 1840 it is said that 2,000,000 had joined his temperance society. He came to this country in 1849 and addressed large audiences in many of our principal cities.

[8] This new liquor legislation caused a great deal of local disturbance and litigation. Some

At first the reformers and legislators stopped short of actual prohibition. The respect for personal liberty and property rights was stronger in this country in those days than it is now. The traffic in liquors was sought to be checked by allowing their sale only in wholesale quantities. Thus, in 1836 Massachusetts passed what was called "the 15 gallon law," as it restricted the sale of liquor in less quantity than 15 gallons; in 1838 it was made 28 gallons. Several other states passed similar laws. Rhode Island put the quantity at 10 gallons, and Mississippi in 1839 enacted a "1 gallon law."

The License Cases of 1847.

At the January term, 1845, three different cases were argued before the Supreme Court of the United States. They are called and reported as the License Cases (5 How. 504, 12 L. ed. 256).

From the *dicta* in these cases dates the beginning of our "judge-made" anti-liquor laws, which have been and are special legislation of the worst kind. From the *dicta* in these cases started doctrines of state rights and police power, which were and are almost entirely of judicial invention. The three cases and the license laws involved are stated in the syllabus, as follows:

Thurlow v. Massachusetts, the law of Massachusetts provided that no person shall presume to be a retailer or seller of wine, brandy, rum, or other spirituous liquors in less quantity than 28 gallons, and that delivered and carried away all at one time, unless he is first licensed as a retailer of wine and spirits.

Fletcher v. Rhode Island, the law of Rhode Island forbid the sale of rum, gin, brandy, etc., in less quantity than 10 gallons; in this case the brandy sold was imported from France into the United States, and purchased by party indicted from original importer.

Peirce v. New Hampshire, the law of New Hampshire imposed similar restrictions upon licenses, although in this case the article sold was a barrel of gin purchased in Boston, Massachusetts, and carried coastwise to the land at Picataqua Bridge, New Hampshire, and there sold in the same barrel.

That important interests were back of the plaintiffs in error, defendants below, is evident from the appearance of Daniel Webster and Rufus Choate in the Massachusetts case. Samuel Ames and John Whipple, two prominent lawyers of their day, represented the plaintiff in error in the Rhode Island case. That serious questions were raised is shown in the fact that the cases were ordered reargued. After having had the License Cases under consideration for two years, at the January term, 1847, the decision of the court was pronounced affirming the judgments.

The report of the cases says that six of the justices gave separate opinions; four of them treated the cases collectively in one opinion, and two expressed separate opinions separately.[9] As stated by Mr. Justice Mathews many years later (1888), the justices in the License Cases concurred in the result, but there was not a majority which agreed upon any specific ground for the conclusion.[10]

The plain issue before the Supreme Court in the License Cases was the interstate commerce clause of the Federal Constitution (§ 8, art. 1) which provides that "the Congress shall have power to regulate commerce with foreign nations and among the several states." Therefore, it is now generally admitted and agreed that the Massachusetts and Rhode Island cases should have been affirmed without argument and without division. The New Hampshire case should have been reversed, following the early decision in Brown v. Maryland, 12 Wheat. 419, 6 L. ed. 678, which held that the right to import goods or liquors included the right to sell in the original package or packages, and that the state tax in question was a regulation of commerce and invalid.[11]

of the cases that reached the state supreme court in 1839–40 were Com. v. Odlin, 23 Pick. 275; Harris v. Com. 23 Pick. 280; Browne v. Hilton, 23 Pick. 319; and Com. v. Blackington, 24 Pick. 352; Com. v. Thurlow, 24 Pick. 374.

[9] Chief Justice Taney wrote one opinion in the three cases; Mr. Justice McLean three opinions; Mr. Justice Catron two opinions (Thurlow v. Massachusetts and Peirce v. New Hampshire) Justices Daniel, Woodbury, and Grier delivered one opinion in three cases. Justices Wayne and McKinley expressed no opinion, while Mr. Justice Nelson concurred with Chief Justice Taney and Mr. Justice Canton.

[10] Bowman v. Chicago & N. W. R. Co. 125 U. S. 477, 31 L. ed. 704, 1 Inters. Com. Rep. 823, 8 Sup. Ct. Rep. 689, 1062.

[11] Peirce v. New Hampshire was first modified in Cooley v. Port Wardens, 12 How. 299, 13 L. ed. 996, and finally overruled in Leisy v. Hardin, 135 U. S. 100, 34 L. ed. 128, 3 Inters. Com. Rep. 36, 10 Sup. Ct. Rep. 681.

In the New Hampshire case, Peirce did not have a license, but, as an importer, he had a right to sell the barrel of liquor in the same barrel and same condition in which it was received by him from another state. The liquor was clearly interstate commerce.

In the Massachusetts and Rhode Island cases, neither Thurlow nor Fletcher had a license; no claim was made that either was an importer. The liquor which they were charged with selling was not interstate commerce, and the conviction was for a plain violation of a proper state license law, and raised no question under the Federal Constitution.

The Dicta in The License Cases.

The justices in the License Cases seized the occasion to give their personal views on intemperance, on the abuse of "ardent spirits" and evils therefrom, and so forth. In this regard they violated long-established judicial ethics and practice. Hence their *dicta* and their actions are open to fair criticism and discussion.

The *dicta* in the License Cases are of two kinds,—those relating to the temperance question, and those relating to the police power of the states.

The Anti-Liquor Dicta.—Even a cursory reading of the report of the License Cases will show that the temperance controversy was allowed to overshadow the real issue. Arguments of the different counsel for the three states were, to a large extent, those that might be used with success at a temperance meeting, but they were out of place addressed to a court on a difficult legal and constitutional question. Let us note some of the arguments made.

Mr. Davis for the state of Massachusetts started out "to prove from historical authority that the ancient Egyptians, the Greeks, and the Romans, and more Eastern nations did through most periods of their existence, maintain rigid and severe restrictions upon the use of wine." The report says (italics mine):

> The counsel then closed his remarks by adverting to the importance which the question had acquired by being *long a subject of earnest controversy and agitation.*

Daniel Webster, "the expounder of the Constitution," as might be expected, stuck closely to the legal points involved. It is only in the last few sentences of his able argument that he briefly refers to the issue outside of the case, as follows (italics mine):

> It remains to be shown that penalties are the best modes of enforcing temperance. Father Mathew does not think so. The states may pursue this policy if they choose, *provided they do not interfere with vested rights.*

Mr. R. W. Greene, for the state of Rhode Island, began his argument by saying (italics mine):

> The law of Rhode Island is strictly a police law, having for its object the suppression of drunkenness. . . . It is a law intended to aid in the accomplishment of *a great moral reform.*

Mr. Ames and Mr. Whipple, counsel for Fletcher in the case, began by saying (italics mine):

> That, under the influence of what is called temperance reform, *a new principle had been introduced into the legislation of Rhode Island on this subject,* which, after numerous fluctuations, had settled the law in the shape of the act of January, 1845.

Mr. Burke, counsel for the state of New Hampshire, wound up with this fervent peroration:

> The people of New Hampshire, almost without distinction of age, sex, or condition, feel a deep and absorbing interest in the final issue of this question. Their sentiments concur with the sense of nearly the whole civilized world, which now considers the traffic in intoxicating liquors is a crime against society. It is disproved by man and stands condemned by the great Moral Judge of the universe, whose purity cannot countenance such manifest admitted wrong.

Mr. Hale, counsel for the Peirces in this case, in his peroration said:

> They (the plaintiffs in error) rely with confidence upon the assurance that here, at least, law may be administered, right defended, and justice maintained, uncontaminated by the breath of local and temporary diseased sentiment which, in its misguided and abortive attempts at reform, essays to eradicate physical and moral corruption from the human heart, by the wondrous efficacy of legislative enactment.

Mr. Hale had the law on his side,—as a long line of decisions of the Supreme Court has since proved,—but whether the law would be administered, right defended, and justice maintained in these particular cases, was another question. Counsel for the states in appealing to passion and prejudice made a false and misleading plea. Although the question of prohibitory laws was not involved, the justices in the License Cases came willingly forward to pronounce upon them.

Chief Justice Taney, after stating that the issue before the court was the interstate commerce clause of the Constitution, threw out this *dictum:*

> And if any state deems the retail and internal traffic in ardent spirits injurious to its citizens and calculated to produce idleness, vice, or debauchery, *I see* nothing in the Constitution of the United States to prevent it from regulating and restraining the traffic, or from prohibiting it altogether, if it thinks proper.

And then he adds with assumed modesty:

> "Of the wisdom of this policy, it is not my province or my purpose to speak." (p. 576.)

Of course, Chief Justice Taney could not "see" what he did not want to see in the Constitution of the United States. His not seeing, or his mental blindness, should not pass for knowledge or law. Therefore, his *dictum* on what he did not "see" is not law, nor is it of any binding force.

The animus of the *dictum* lies in the hint openly and pointedly given, that the states could pass prohibitory laws. This advice has a sinister significance in view of the legislation that soon followed the suggestion so artfully made.

Mr. Justice McLean in his opinion made this admission:

> "A great moral reform, which enlisted the judgments and excited the sympathies of the public, has given notoriety to this course of legislation and extended it, lately, beyond its former limit." (p. 588.)

Mr. Justice Woodbury, who, as has been noted, when Secretary of the Navy, had forbidden the use of spirits by the sailors, said in his opinion:

> As these laws were passed by states possessing experience, intelligence, and a high tone of morals, it is neither legal nor liberal to attempt to nullify them by a forced construction, so as to make them regulations of foreign commerce. (p. 626.)

Mr. Justice Grier misstated the real issue before the court. He said:

> The true question presented by these cases, and one which I am not disposed to avoid, is whether the states have a right to prohibit the sale and consumption of an article of commerce which they believe to be pernicious in its effects.

It is thus seen that the *dicta* thrown out by the justices in the License Cases relate to the abuse of intoxicating liquors. Nothing is said about their proper or temperate use. From the abuse of a thing can a sound legal or other argument be drawn against its use? I hold not. Against the argument of abuse, upon which so much of our judicial and statutory anti-liquor legislation is founded, I put the legal maxim, *Ex abusa non arguitur ad usum.*

In the early Indiana case of Beebe v. State (6 Ind. 501, 63 Am. Dec. 391), in which an act prohibiting the manufacture and sale of intoxicating liquors, passed in 1855 as the result of a prohibition "crusade," was declared unconstitutional as being an unwarranted invasion of personal rights, Perkins, J., said:

> "It is the abuse, and not the use, of all these beverages that is hurtful. And the manufacturer or seller does not necessarily know what use is to be made by the purchaser of the article. It may be a proper one, and, if an improper one, it is not the fault of the manufacturer or seller, but it is thus appropriated by the voluntary act of another person, and by his own wrong. . . . Firearms and gunpowder are not manufactured and sold to shoot innocent persons with, but are often so misapplied. . . . We repeat, the manufacture and sale and use of liquors are not necessarily hurtful."

The Police Power Dicta.—Another peculiar feature of the License Cases is the judicial extension of the police power of the state. The application of the police power to support moral reform and class legislation was in 1847 certainly a novel proposition. It had no warrant in the common law and in the decisions of the highest courts of England. It had no precedent in the previous decisions of the Supreme Court of the United States.

Chief Justice Taney asked the question: "What are the police powers of a state?" He answered, "They are nothing more or less than the powers of government inherent in every sovereignty to the extent of its dominions." (p. 583.)

Mr. Justice Woodbury disclosed the real reason for invoking the police power of the state when he said: "Our duty to the Constitution and laws, and our respect for state rights, must require us not to interfere." (p. 626.)

Mr. Justice Catron, who vigorously dissented from the *dicta* already quoted, laid down the following proposition, which should be good law to-day:

> The same process of legislation and reasoning adopted by the state and its courts could bring within the police power any article of consumption that a state might wish to exclude, whether it belongs to that which was drunk, or to food and clothing; and with nearly equal claims to propriety, as malt liquors and the produce of fruits other than grapes stand on no higher grounds than the light wines of this and other countries, excluded, in effect, by the law as it now stands. And it would be only another step to regulate real or supposed extravagance in food and clothing . . . For these reasons I think the case cannot depend on the reserved power of the state to regulate its own police. (p. 599.)

But there was a reason in 1847 for invoking the police power of the state. The reason was largely a political one. The police power was used to sustain slave laws and state rights. These two questions—slavery and state rights—had become great political issues. They were, as we all know, causes for the most bitter and prolonged controversy in this country.

The first mention of state police power which I find in the decisions of the Supreme Court are two brief references by Chief Justice Marshall, in Gibbons v. Ogden,[12] decided in 1824. In one place, he says the power expressly granted to Congress to regulate interstate commerce implies no claim of a direct power to regulate "purely internal commerce of a state or to act directly on its system of police." (p. 204.) In another place, he refers to the states "exercising the power of regulating their own purely internal affairs, whether of trading or police." (p. 209.)

And in pointing out what he calls a mass of power—he does not use the term "police power"—not surrendered by the states, Chief Justice Marshall specifically enumerates, "inspection laws, quarantine laws, health laws of every description, as well as laws for the regulating of the internal commerce of a state, and those which respect turnpike roads, ferries, etc." (p. 204.) Three years later, in 1827, in Brown v. Maryland,[13] the chief justice admits the right of a state to direct the removal of gunpowder "as a branch of the police power, which," he says, "unquestionably remains and ought to remain with the states."

These statements show just what our greatest constitutional jurist understood by the police power of a state. It does not seem possible that he could have been ignorant of what this police power really is, how and when it could be constitutionally applied and used. And so I believe if Chief Justice Marshall could suddenly return to the court over which he presided for thirty-four years, he would not only be startled, but he would object, with his usual vigor and ability, to the misapplication and misuse of a vague and undefined police power now so confidently and calmly put forth in furtherance of special, class, and anti-liquor legislation appearing in the guise of public health, morals, welfare, and other fine-sounding terms. Indeed, it is curious that a theory of police power, for which there was no legal or constitutional standing before 1847, should become in the year 1916, by a process of judicial legislation, paramount to the plain and distinct guaranties of the personal liberty and property rights of the citizen set forth in our State and Federal Constitutions.

The doctrine of the police power of a state for political purposes appears full-fledged in New York v. Miln,[14] decided by the Supreme Court in January, 1837. Mr. Justice Barbour, speaking for the court, declared:

> That all of those powers which relate to merely municipal legislation, or what may

[12] 9 Wheat. 1, 6 L. ed. 23.
[13] 12 Wheat. 442, 6 L. ed. 686.
[14] 11 Pet. 102, 9 L. ed. 648.

perhaps, more properly be called internal police, are not thus surrounded or restrained; and that, consequently, in relation to these, the authority of a state is complete, unqualified, and exclusive.

Mr. Justice Barbour relied upon the brief remarks (already quoted) of Chief Justice Marshall in Gibbons v. Ogden and in Brown v. Maryland. Now, what led Mr. Justice Barbour to extend and increase the police power of the state? The answer may be found in the change that had come in the membership of the Supreme Court.

Sometime before Chief Justice Marshall's death on July 6, 1835, through appointment by President Jackson of justices who were in sympathy with his party or political policies, the complexion of the Supreme Court had changed. With the confirmation in March, 1836, of Philip P. Barbour as associate justice, and of Honorable Roger B. Taney as chief justice, five of the seven justices were his appointees. In 1837 Congress passed an act increasing the number of justices to nine, and the charge was openly made at the time of "packing" the court with pro-state bank and state rights advocates,—just as a similar charge was made in 1869, when Congress again raised to nine the number of justices which had been reduced to seven in 1866.

Mr. Tyler, a lawyer, biographer, and intimate friend of Chief Justice Taney, frankly says that his judicial administration must be considered as a reaction against the later tendency of that of Chief Justice Marshall.[15] The reactionary tendencies of the Supreme Court were soon plain enough.

Before Chief Justice Marshall's death, three cases of great importance had been argued and were pending. They were New York v. Miln (11 Pet. 102, 9 L. ed. 648); Briscoe v. Bank of Kentucky (11 Pet. 257, 9 L. ed. 709); Charles River Bridge v. Warren Bridge (11 Pet. 429, 9 L. ed. 777).

The three cases were ordered to be reargued. The decisions were handed down in due time. I have already noticed the new claims made for the police power of a state in New York v. Miln.

In the Briscoe Case the court held that the act incorporating the Bank of the Commonwealth of Ky. was constitutional, and that the bank bills issued were not bills of credit within the meaning of the Constitution. One evil result of this decision was to legalize state bank schemes, and also "wild cat" currency which flooded the country for some years.

In the Charles River Bridge case the court again resorts to the police power to justify and sustain state rights. "We cannot deal thus," said Chief Justice Taney, "with the rights reserved to the states, and by legal intendments and mere technical reasoning take away from them any part of that power over their own internal police and improvement which is necessary to their well-being and prosperity."

Mr. Justice Story vigorously dissented from the majority views in the three cases. Next to Chief Justice Marshall, he is regarded as having been the ablest jurist who sat during his long service in the Supreme Court. It is quite evident that Mr. Justice Story did not take much stock in the "new opinions" put forth by "new men" for the furtherance of the police power of the state. In his dissenting opinion in New York v. Miln he said:

It has been argued that the act of New York is not a regulation of commerce, but is a mere police law upon the subject of paupers; it has been likened to the cases of health laws, quarantine laws, and others of a similar nature. The nature and character of these laws were carefully considered, and the true answer given to them in the case of Gibbons v. Ogden.

As early as 1838 in a letter to Mr. Justice McLean, Justice Story declared that "the old constitutional doctrines are fast fading away, and a change has come over the public mind from which I augur little good." He became more and more dissatisfied, perhaps disgusted, with the new doctrines and with his position in a court where he was in the minority. He decided to resign at the December term in 1845, but he died in July of that year. In a letter sent in April, 1845, to a friend, Justice Story wrote: "I have long been convinced that the doctrines of the "Old Court" were daily losing ground, and especially on those great constitutional

[15] Tyler, Memoir of Roger Brooke Taney, p. 271.

questions. New men and new opinions have succeeded . . . and I cannot consent to remain where I can no longer hope to see those doctrines recognized and enforced." [16]

The next step was to invoke the police power of the state for the benefit of the slave power. This was done in 1841 in the two important cases under the title of Groves v. Slaughter.[17] Once more the new doctrine of 1837 is put forward to justify a peculiar Mississippi state law involving inter-state slave trade. "The power over slavery," said Mr. Justice McLean in this case, "belongs to the states respectively. It is local in character and in its effects. . . . The right to exercise this power by a state is higher and deeper than the Constitution." The power to regulate inter-state traffic in slaves was not involved, but Mr. Justice McLean and Chief Justice Taney in this case both came forward to insist that any law passed by a state in the exercise of its police power is paramount to any clause of the Constitution or any commercial regulation passed by Congress.

It is necessary to follow this growth of judicial legislation in order to discount the use of anti-liquor *dicta* in the License Cases. Here, again, was an opportunity for the justices of the Supreme Court to introduce and extend the doctrine of state rights and of the police power of the state. True, the so-called "moral reform" was a side issue, but that made no difference.

Hence the *dicta* of the justices in the License Cases about the abuse of ardent spirits, on the evils of intemperance, etc., should not be taken too seriously. The justices knew very well that whatever *dicta* they uttered against the liquor traffic, even to declaring that it might be prohibited, that traffic nevertheless would still go on about as usual. They preached —as so many other judges have also preached—not against the use, but the abuse, of liquor, although no one defends intemperance.

The point is this, the early anti-drink movement was connected with the anti-slavery agitation. Thus almost all of the temperance leaders were among the strongest anti-slavery advocates. It is significant that, after the Civil War, the most active workers for temperance and prohibition were these same anti-slavery partisans, such as Wendell Phillips, Gerrit Smith, Rev. William Ellery Channing, Horace Greeley, Henry Wilson (who became vice-president of the United States in 1873), and James Black, the first candidate of the prohibition party for president in 1872.

And so there was considerable method in the action of the justices in the License Cases. The anti-drink reformers were not interested in state rights, but the justices were. The result of the opinions in License Cases was to throw a sop to the temperance people, and at the same time to strengthen the police power for the state rights' party. Thus both sides should be satisfied. The temperance reformers got the decision and the state rights' party got the law.

Lee J. Vance

[16] Life and Letters of Joseph Story, by W. W. Story, vol. 2, p. 527.
[17] 15 Pet. 449, 10 L. ed. 800.

Personal Liberty

BY EVERETT P. WHEELER

of the New York Bar

IN HIS oration on Lafayette, Edward Everett said of the gallant Frenchman, who left home and wealth and comfort to help us in our struggle for independence—"What was it, fellow citizens, that gave to Lafayette his spotless fame?—the love of liberty . . . the living love of liberty protected by law." This is the American ideal, the ark of the covenant for loyal Americans. Lafayette went back to his native land and tried to raise this standard there. But the Jacobins were too strong for him. They believed in the omnipotence of temporary majorities. They banished Lafayette, who was equally odious to the Austrian despots, and was immured by them in Olmutz. The tyranny of the mob became unendurable. It was succeeded by the absolute rule of Napoleon which at least gave security to honest industry. He in turn fell. Fifty-five years after Waterloo, the American principle, which Lafayette represented, triumphed and was embodied in the Constitution of the French Republic, which has lasted for forty-five years and under which France endures the fiery trial of this bloody war, with firmness and courage.

The principle is this: Each citizen has the right to life, liberty, and the pursuit of happiness, but in such manner as not to interfere unreasonably with the corresponding right of his neighbor. All citizens are members of the body politic. Each has his part to play, his duty to perform. The law protects the right of each, and the courts sit to enforce this law. Their mandate is to be obeyed. The Bill of Rights expresses this American principle. No temporary majority is despotic. The people are sovereign, but their sovereignty is not absolute. They are subject to the fundamental law which they themselves have adopted:

"Submission constituting strength and power."

This American Democracy was founded, centuries ago. The first settlers endured greater hardships and were compelled to lead a more strenuous life than those who come to-day.

Their descendants surely ought to have for the more recent comers love and sympathy. For one, I have. I read with delight that wonderful book of Mary Antin's,—"The Promised Land,"—and, as I read, it seemed as if she were in spirit describing the struggles of the fishermen who landed on the coast of Maine, and of the farmers who strove to earn an honest living on the hills and in the valleys of New York. They struggled bravely and with good hearts. They overcame the difficulties of their situation. They laid the foundations of the American Republic on which are built the noble structure in which we dwell. They liked it better than the government of the countries from which they came. After the experience of both they did not return, though they had opportunity. May we not start, then, with the proposition that our American Democracy is a success? Its success in great measure is due to the fact that our fathers embodied the American principles which I have stated, in written Constitutions which define the rights of the citizen and the power of the government, and established courts of justice to explain this written Constitution and secure the rights of each individual from invasion. The judges of these courts are meant to be and generally are impartial and acquainted with the law of our country. They are vested with the power of enforcing their decisions. If a single judge err, there can be an appeal.

By faithful adherence to these prin-

ciples the prosperity and happiness of every individual will be secured as far as the law can secure it. The man or woman who is thrifty, industrious, and honest has an opportunity to better his condition, and, by saving something from the result of his toil, climb to a higher level. All wealth is the result of co-operation. Whatever, therefore, tends to produce enmity between the creative mind that plans the work, and the industrious hand that does it, cripples both the head and the hand. The American conception of democracy gives to each citizen an opportunity to make the most of his natural gifts, restrains him from unlawful interference with the rights of his neighbor, and teaches him to rely for success on the blessing of God, and on his own honest industry and dauntless courage. This is the law of God, and our fathers embodied it in our Constitution.

American freedom is the child of American democracy. It involves equal rights and equal duties. It involves, on the one hand, the supremacy of law, on the other, it means freedom from needless governmental restraint. The distinctive American idea which we ought to cherish sacredly, and from which we should never depart, is that the greatest good of the greatest number can be best achieved by giving to each individual the right to work out his own salvation; obedient to law, but not pinioned by needless restrictions.

Long before 1789 other nations had tried forms of government in which the will of the public officials was supreme, and in which the individual had no protection from arbitrary power. By the law of the Roman Empire the will of Cæsar was paramount. He had the right, by special decree, to interpret statutes in reference to cases pending in the courts. The result was tyranny, not freedom.

The American method, embodied in the American Constitution, preserves order and protects life, liberty, and property of the individual from unlawful interference. It is a distinct evolution in civilization. To this we owe, in large measure, that security and good government which stimulate our youth to diligent endeavor, and make us on the whole a happy and prosperous people.

Our salvation is not to be found in numerous and complicated governmental requirements. That is a European idea which our fathers discarded. On the fragments of that shattered idol they reared the American Republic. We should stand up bravely for the American principles of the dignity of labor, the love of labor, the security of labor, and the freedom of labor. This is our quadrilateral. If the men and women of America are true to these principles, and exert their mighty influence in their protection and defense, the assaults of domestic enemies will be as impotent as the clouds that pass across the sky to impair the heat and light of the sun. These may be obscured for a time, but they cannot be quenched.

Many of the propositions which are now being advocated would change radically the character of the American system of government. The distinctive principle of that system, embodied not only in the United States Constitution, but in that of all the states prior to the present century, is this: The legislature is not omnipotent; a temporary majority is not omniscient. The people are not willing to intrust their representatives or themselves with unlimited power. Therefore the people adopt written Constitutions which regulate and restrain the Legislature and the Executive, and establish courts with power adequate to enforce these constitutional restrictions, and thereby give security to every citizen.

Prior to 1789 the people of the United States had bitter experience with a Parliament that claimed to be omnipotent, and with legislatures of the separate colonies that were not in fact restrained by any written constitution. The result was no doubt much worse in the United States than in Great Britain, for the thirteen colonies discriminated against each other in various ways, and refused to obey the requirements of the central Confederate government. Each legislature felt its power to be unlimited by anything but its own sense of right. Each temporary majority voted to do what

was right in its own eyes. The result was lawlessness, bankruptcy, and loss of credit.

The men who framed the Constitution of the United States knew that a state could not prosper unless the individual members were prosperous, and that no individual member could prosper unless he was secure in the right to earn an honest living and to enjoy the fruit of his labors. Liberty and order were to be inseparable. They therefore ordained and established the Constitution "in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessing of liberty to ourselves and our posterity."

The third article of the Constitution provides:

"Section 1. The judicial power of the United States shall be vested in one supreme court and in such inferior courts as the Congress may from time to time ordain or establish.

"Section 2. The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States and treaties made, or which shall be made, under their authority."

Thus the Supreme Court is made by the Constitution a co-ordinate branch of the United States government.

In article six, paragraph two, we have the final declaration:

"This Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land."

Under these provisions the Federal courts, in 1791 and again in 1795, held that it was not only the right, but the duty, of the court to decide that an act of the legislature in violation of the Constitution was void.[1] How otherwise could the provision be enforced that the Constitution was the supreme law? If a law is supreme, it must control. The only way to make its control effective is to enforce it. This enforcement is enforcing the authority that the people, in adopting the Constitution, gave to the court. In short, the final authority is vested in the people, not in the members of the legislature or in judges.[2]

When the subject is seriously considered it will appear that restrictions upon the power of the courts to enforce peaceably the guaranty of the Constitution will end inevitably in the reign of force and violence. Under conditions of force and violence, justice is silent and the strongest prevails.

These considerations are especially important now, when combinations of railway employees and of coal miners are threatening,—the one to break up the commerce of the country, the other to deprive our people of necessary fuel, unless their demands are granted.

One of the most striking features of the development of American life is the growth of great combinations. It is sometimes said that these are inconsistent with the ideals of American democracy. To me they seem an outgrowth of American freedom. The right of an individual to use to the best advantage the talents which God has given him, or which he has developed by education, should be sacred. It is mainly by this freedom that encouragement is given to such development. On the other hand, the besetting sin of the powerful is the abuse of power. To prevent this the law should be supreme, and the government should have full power to enforce it. The state, on the one hand, should refrain scrupulously from giving to any individual or association advantages which are denied to others. All should be on an equal plane of opportunity so far as the law can give it. All should be prevented as far as possible from using these opportunities to the injury of others. But the individual who makes the most of his opportunities for the benefit of others, and not to their injury, ought to have full scope for the development of his powers and the preservation of the rewards of his skill and diligence. These observations are just as applicable to combinations of labor as to combinations of capital. Combination increases the power of the individual. A labor

[1] Vanhorne v. Dorrance, 2 Dall. 304, 1 L. ed. 391, Fed. Cas. No. 16,857.

[2] Marbury v. Madison, 1 Cranch, 137, 180, 2 L. ed. 60, 74.

organization is far more powerful than the individual workmen who compose it. An organization of men who have acquired property by their skill and diligence is also more powerful than the individuals of which it is composed. In either case, the greater the power the greater the danger of its abuse. But it is not American to prohibit the organization. It is American to subject the same to reasonable and just laws.

On the one hand, we ought not to put our men into straight jackets. On the other hand, we must not let them become marauders. The law should not only punish excesses, whether committed by capital or labor organizations, but should enable all controversies between them to be peaceably settled. There are notable instances in the recent history of this country which point the moral of what I have just said.

The Pullman strike in 1894 for a time threatened to break up all commerce between East and West passing through Chicago. The firmness and courage of Grover Cleveland averted the danger. As Theodore Roosevelt said:

"The completeness of the victory of the Federal authorities, representing the cause of law and order, has been perhaps one reason why it was so soon forgotten; and now not a few short-sighted people need to be reminded that when we were on the brink of an almost terrific explosion, the governor of Illinois did his best to work to this country a measure of harm as great as any ever planned by Benedict Arnold, and that we were saved by the resolute action of the Federal judiciary and of the Regular Army. . . . Every true American, every man who thinks, and who if the occasion comes is ready to act, may do well to ponder upon the evil wrought by the lawlessness of the disorderly classes when once they are able to elect their own chiefs to power."

We learned wisdom from this Pullman strike, and Congress, by the statute known as the Erdman act,[3] provided a tribunal for the arbitration of disputes between common carriers and their employees. This act was repealed by the act of July 15, 1913,[4] and more adequate provision was made for the arbitration of controversies between common carriers and their employees.

The board of arbitration may consist either of six or three persons, as the parties agree. Their award is to be filed in the office of the clerk of the district court of the United States, "and shall be final and conclusive upon the parties to the agreement, unless set aside for error of law apparent upon the record."[5]

Our experiences during 1913, when a strike of locomotive firemen was threatend, shows the value of the tribunal thus created. The questions in dispute between the companies and their employees were submitted to arbitration under the provisions of the Federal statute. The arbitrators were competent men. They gave a full hearing to both sides, and made a unanimous award. On the other hand, the recent tragical strikes in Colorado show that provision similar to that of the Erdman act should be made for arbitration of all labor disputes.

In short, we should not prohibit organizations of labor. Give free scope to their lawful activity, but restrain them from violence. Let tribunals be created for the peaceable settlement of controversies with their employers.

In like manner we should deal with combinations of capital. They should not be prohibited. They should not be limited in any beneficent activity. But they should be restrained effectively from what Mr. Justice Holmes called "destructive competition." That was the grievance that led to the adoption of the Sherman act. So far as that was effected by rebates, it has already been suppressed. Any other forms of discrimination by which the strong seek to get advantage of the weak can also be suppressed. Give them fair play. American liberty stands erect and holds the scales of equal justice. "She hears arguments, and then, if necessary, uses the sword."

Everett P. Wheeler

[3] 30 Stat. at L. 24, chap. 2.
[4] 38 Stat. at L. 103, chap. 6, Comp. Stat. 1913, § 8666.
[5] Section 4, 38 Stat. at L. 105.

The National Guard and the National Defense

BY MAJ. GEN. JOHN F. O'RYAN

Commanding National Guard, New York

IN THE February number of CASE AND COMMENT, I indicated the shortcomings of the organized Militia from the national standpoint. These shortcomings can be traced directly to lack of Federal control and uniform organization, which includes the tenure of office of the officers, the methods of their selection, their qualifications for office, their retirement, and the physical fitness and period of enlistment of the men. It remains now, in order to cover this subject adequately, to discuss the remedy for these conditions.

As has been stated, the untrained, poorly armed, and equipped Militia of the Revolution consisted of bands of the citizenry of the country. They were Militia in the sense that they were male citizens between prescribed ages, but it is a far cry from these untrained and undisciplined bands to the twelve tactical divisions of the Organized Militia of the present day, who are armed as the regulars are armed, clothed and equipped as the regulars are clothed and equipped. In the propaganda now being conducted in support of a large standing professional army, every effort is apparently being made to create the impression that these untrained bands of the Revolution were the progenitors of the present National Guard, and that the latter force inherently partakes of the shortcomings of the untrained citizenry of the Revolutionary period. After the Revolutionary War was over, Washington made a careful study of the Militia provisions of the Constitution. In that study he was ably assisted by his Secretary of War, General Henry Knox, a distinguished officer of the Revolution. As a result of this study a plan was submitted to Congress which was known as the "Knox plan." It provided for compulsory military training in the Militia, and its development into a great national Army. Washington in a formal message to Congress gave it as his opinion, based upon his experience as the commander of the Revolutionary Army, and as one who had studied the Militia provisions of the Constitution, that Congress had the power to so organize, arm, equip, discipline, and develop the Militia in such manner as to render it capable "of meeting every military exigency of the United States."

As the Constitution vests in Congress the power to provide for the organization and discipline of the Militia, it is within the power of Congress to provide a uniform code of laws for the government of the Militia of the United States. It is within the power of Congress, under its right to provide for organization, to prescribe not only the number of men in a company, and the number of companies in a regiment, but to prescribe the number of officers in each grade, their tenure of office, their qualifications, the manner in which they shall be retired or be dismissed from the service. It is within the power of Congress to provide the physical and other standards for enlistment in the Militia, and to fix the period of enlistment. Once Congress exercises this power, all state Constitutions and state laws inconsistent therewith become null and void. Much misstatement in respect to this point has been made in the propaganda against the development of the Militia. In the cases of Houston v. Moore, and Martin v. Mott, in the Supreme Court of the United States, and reported in 5 Wheat. 1, 5 L. ed. 19, and 12 Wheat. 19, 6 L. ed. 537, respectively, the powers of Congress over the Militia

are fully discussed. It there is made plain that the authority of the states severally to provide for organization was necessarily exercised because of the failure of Congress to exercise its paramount powers. Under the Constitution there is reserved to the states only the power to appoint the officers and the power to train the Militia, but with this important restriction; namely, "according to the discipline prescribed by Congress."

Much has been made of this power delegated to the states to appoint the officers, and it has been made to appear that the governors inject politics into the National Guard by the appointment of officers of their own choice. There is no foundation for this claim. In most of the states the officers are selected at the present time, either on the nomination of the organization commander, or as a result of an election by the men, and in some cases by the officers. We need expend little time in disposing of this criticism, for it must be evident that if Congress has the power to provide for a method of selection, the tenure of office, and the qualifications in each grade, the power of the governors to appoint becomes in effect merely the power to nominate. Legislation of this character has been upheld in civil service litigation. It will be remembered that the earlier decisions held that where the civil service law sought to restrict the appointing power to the appointment of the individual who stood at the top of the civil service list, it was held that this in effect devested the appointing officer of his power of appointment, but later when the law was amended so as to provide him with a field of selection consisting of the three individuals standing highest on the list, the constitutionality of the civil service law was upheld. Applying the same logic to the powers reserved to the states in respect to the appointment of Militia officers, and reading that power in connection with the other provisions vesting in Congress the power to "organize," it will become apparent that there is no serious interference with the governors' prerogative to appoint, by providing that his appointee shall meet the standards prescribed by the Federal government.

In considering these several provisions of the Constitution, the primary object sought to be attained should be borne in mind. The primary object was to provide for the national defense, to provide a fully organized, armed, and trained national force available on call of the President for the repelling of invasion, the suppression of insurrection, and the execution of the laws. The secondary object was to safeguard the liberties of the people by giving to the states certain rights not inconsistent with the primary object. These rights to the states must therefore be interpreted in such manner as not to defeat the primary object of the Constitution. What properly concerns the Federal government is that the commissioned officers of the Militia shall be qualified for their duties. It matters little what official, Federal or state, signs his name to the officer's commission, so long as the officer has demonstrated his fitness according to the standards prescribed by the central government. The very officers who constitute the Federal government, so far as the lawmaking power is concerned, namely, members of Congress, receive their commissions, not from Federal sources, but from their states. Yet no one would seriously question their efficiency or loyalty by reason of that fact. Even under the great German military system the power to appoint officers is largely reserved to the states. No one will seriously question the efficiency of the German Army by reason of the existence of such system.

The officers of the National Guard are deeply concerned with eliminating the possibility of the introduction of politics into the selection of officers. They believe that officers, the creatures of Federal politics, are equally as objectionable as officers who might be the creatures of state politics. They recommend that under its power to "organize" the Militia, Congress will not only prescribe the qualifications to be met by officers in each grade, but that the governors will be limited in their selection to lists of names of those who have met prescribed standards as to previous training or service. No doubt exists as to the power of Congress to make such reasonable restriction.

Much has been stated recently in the public press concerning the power of the

governors to train the Militia. The governors do not train the Militia at the present time, any more than the President of the United States trains the Regular Army. The Regular Army and the Organized Militia are trained by their officers, and if these officers are required to qualify for their commissions according to standards prescribed by the War Department, their efficiency should be assured, and the men entrusted to their leadership will be properly trained. The training prescribed for the Militia is at the present time fixed by the War Department, because under the Constitution it is prescribed that the training shall be "according to the discipline prescribed by Congress." The states will have no power to modify any system of training prescribed by Congress.

Mention has been made of the fact that the propaganda in support of a great standing army has manifested itself during the past few weeks in attacks upon the Organized Militia. Among the criticisms made of the Militia is the fact that under the Constitution it cannot be used outside of the territorial limits of the United States unless the troops volunteer for such service. The officers and men of the Militia who enlisted under the belief that their service could be required anywhere in the world readily responded to this criticism, and have petitioned for the enactment of a constitutional amendment making their services available anywhere in the world without the necessity for a special expression of willingness for such services by the act of volunteering when the occasion arises. Some study, however, has recently been given to this point, and the opinion is crystallizing that this limitation of the Constitution is a very sound limitation. We have found that it has been copied abroad, and that much misinformation exists as to the extraterritorial powers of governments in the matter of the use of their armies. It has been found, for example, that in the organic law of Australia it is not only provided that no regular army shall be maintained in the commonwealth of Australia, but that the national forces shall not be sent for service outside the continental limits of Australia unless the troops volunteer for such service. Similar provision exists in Switzerland. A Japanese officer is authority for the statement that the Japanese Army may not be used outside of territory under the control of the Japanese government, except for defensive purposes, unless the troops volunteer for such service. Even the great German Army is subject to a similar limitation. At the time of the China Relief Expedition, it was necessary for the Emperor to call for volunteers under the laws of the Empire, in order to make up the contingent for foreign service. It is now believed that this limitation is a sound and wise one. No nation which launches into a foreign war of aggression can hope for success unless there is back of the war an intense public sentiment in support of it. Lack of public sentiment in support of the war was the cause of the failure of Russia in the Manchurian Campaign. General Kuropatkin's work on the Manchurian Campaign conclusively indicates this. And yet Russia is an absolute monarchy. If public sentiment supports a foreign war, necessitating the use of troops outside territorial limits, the troops will always volunteer. This has been found to be the case with other powers. The Australian troops promptly volunteered for extraterritorial service in the present war in Europe, and so we find the Australian soldiers rendering excellent service in other parts of the world.

A great effort has recently been made to show that the President has little or no power over the Organized Militia, either in peace or in war. Federal control in time of peace may be made effective and complete for all practical purposes, by adequate Federal legislation. War-time control is complete at the present time. An effort has been made to give the impression that the President is dependent upon the willingness of the governors to have the Militia serve, and that when the governors consent to call forth the Militia they constitute forty-eight little armies. Every soldier knows better. The power of the President over the Militia is vested in him by the Federal Constitution. He is empowered as Commander in Chief of the land and naval forces of the United States, to call forth the Militia to repel invasion, to

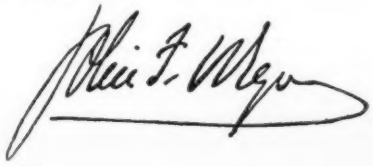
suppress insurrection, and to execute the laws. These purposes embrace every legitimate national purpose of a defensive nature. Not only that. The President has the power to call forth the Militia whenever, in his opinion, there is imminent danger of invasion, and he alone is the sole judge of the necessity for his act. The President has no such power in respect to volunteers. Before calling for volunteers the President, under the law, must assemble Congress and gain their consent. In the case of the Militia he needs no approval of Congress to call them forth.

The safest, most economical, and the most efficient manner of providing for the national defense, is to build a great national Army under the Militia provisions of the Constitution. The history of nations teaches the danger of intrusting the security of national institutions and liberty to a professional standing army. Human nature is human nature the world over, and it has been the same from the beginning of time. If our institutions and form of government are worth preserving, their preservation should be the immediate concern of the manhood of the country. The military system of the country should be such as to impose upon the manhood of the country the fundamental obligation of qualifying to efficiently fulfil the military obligation of citizenship. The system of attempting to wage war with a professional army, supplemented by volunteers, has been abandoned by all the great powers except Great Britain and the United States, the two powers admittedly the least prepared to successfully wage land warfare. When the present war in Europe broke out Great Britain had a highly trained professional Army of approximately 165,000 officers and men located in the south of England. This professional Army was moved with faultless precision to the continent of Europe, and there, like a hand grenade, it was thrown on the conflagration. Great Britain's professional Army met the trained citizenry of the German Empire, and we know what happened to it. Modern warfare requires numbers as well as training. The result of the destruction of this Army has desperately handicapped Great Britain in the organization and development of her great national Army, with which she must wage the war. Imagine what might have been if this highly trained personnel had been merged into and utilized as leaders and instructors of the great war Army.

General Grant in his Memoirs states that if he had known as much about the conduct of war on a great scale when he took command, as he did at the termination of the war, his first act would have been to disband the Regular Army of the United States, and utilize its officers and experienced men as leaders and instructors of the great Northern Armies. The regular Army of the United States should be of a size sufficient to garrison fortifications actually needed, and to provide a small expeditionary force for international police purposes of a minor character, and the remainder, with a large increase in the commissioned and noncommissioned personnel merged into the great national Army composed of the manhood of the nation, organized and trained under the Militia provisions of the Constitution.

I have mentioned that Washington recommended to Congress the organization of such a national Army, and gave it as his opinion that it could be rendered capable "of meeting every military exigency of the United States." Major General Wood of the United States Army has publicly stated that if Washington's recommendations had been adopted, there would have been no second war with Great Britain, or, if there had been, Canada would now be a part of the United States. The force recommended was a national Army under the Militia provisions of the Constitution.

It should be the concern of every citizen to see to it that Congress provides for the national defense in a safe and adequate manner, and consistent with the organic policies laid down in the Federal Constitution.



The Trial of Socrates

BY HON. WILLIAM N. GEMMILL

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IT IS well for a busy lawyer to occasionally go aside from his unromantic search for legal precedents, and behold some of the ancient footprints which lead back to the dawning of his profession. In so doing he will discover some of the foundation principles upon which governments have been built, and around which mankind has found a solution for many of its most vexatious problems.

If one desires to know the character of any civilization he must first learn what were the laws which guided the development of that civilization, and how these laws were framed and enforced. If he would know what kind of government a nation possessed, he can best learn by inquiring what kind of justice was administered in its courts during that period.

No lawyer should be content to spend his life in storing his mind with precedents, for while such a study is valuable, yet it limits one's horizon and narrows the mind. Every lawyer should be in love with his profession, and should delight himself each new day with the thought that he belongs to the noblest of callings and one which, more than any other, has contributed to the world's progress and erected in the world those safeguards of civilization which have not only brought liberty to the oppressed, but have preserved and enlarged those human rights which are now the common inheritance of us all. In no better way can the lawyer be exalted by the knowledge of the gifts which his profession has contributed to the world's progress, than by a study of some of the great trials of history. A trial is but the method by which a government seeks to achieve justice to one accused of violating her laws. In studying such trial, one can get the view point of the government and can thereby understand what was its conception of justice, and what were the instruments by which it sought to obtain it.

If you would know the measure of liberty granted to a citizen of Rome in any particular period you can best ascertain that by studying a famous trial of someone accused before the tribunals of Rome during that period. Such a study is not only of value in ascertaining the measure of the civilization of the times, but it is also of value in order to learn what contributions were made by the great lawgivers of that time to the enlightened laws and Constitutions by which we are to-day governed.

If you would know something of that most wonderful Code of Jewish Laws, you can find no better place to study it than in the greatest trial of history, that of Jesus of Nazareth, both before the Jewish Sanhedrim, and before Pilate, the Roman procurator.

In order to properly understand the civilization of Greece during the period of its greatest glory, a lawyer should familiarize himself with the two trials of Demosthenes,—one for conspiracy to accept a crown and overthrow the government of Athens, and the other for embezzling the funds of the Athenian treasury. He should also read the trial of Pericles on the charge of treason, and of Xenophon, who was tried before a jury of ten thousand men upon the charge of assault with intent to commit murder. If he would understand Roman justice and the contributions of Rome to our modern laws, he should read the great trial of Cicero, who, having by his unrivaled eloquence so moved all Rome to sentence and illegally put to death the conspirators of Catiline, was himself immediately thereafter arrested, tried,

and convicted upon the charge of having caused the murder of the same conspirators. He should then read the trial of Seneca, upon the charge of conspiring against the Roman Republic.

If one would understand the laws of Spain, during the Middle Ages, he will learn much by studying the several trials of Cervantes and his frequent escapes from punishment. If he would understand the judicial system of Italy he should read the trial of Dante, on the charge of malfeasance in office. If he would known something of the French courts of justice, study the trial of Voltaire, on the charge of slandering the character of Joan of Arc; and of Joan of Arc on the charge of being a heretic and a sorceress. If he would know something of German justice, then read the trial of the great composer Richard Wagner, who was accused of treason. If he would know what measure of justice England administered in her courts through many centuries, he should read the trial of Cardinal Wolsey, upon the charge of high treason; of Lord Bacon, for accepting bribes; of Ben Jonson, for murder; of Daniel De Foe and Shelley, for treason; of Robert Burns, for smuggling; and especially should he read the trial of Sir Walter Raleigh, and hear from the lips of this noble courtier the warnings which he gave to England concerning the danger of permitting English courts to receive hearsay evidence, and of refusing to compel witnesses who gave such evidence to confront the accused in open court.

It is the purpose of the writer to sketch briefly some of these great trials, and the first to be considered is that of Socrates, who was perhaps not only the greatest philosopher of ancient or modern times, but contributed in no small measure to the humanizing of the laws not only of Greece, but of all nations that have borrowed so much from this, the greatest of all our fountains of learning.

Socrates was not a lawyer in the modern sense, but in his day no man who lived was more consulted, not only about what was the law, but what the law ought to be. He was born in 470 B. C. and died 400 B. C. During the whole of his seventy years he left Athens but three times, and then only as a soldier enlisted to fight the enemies of the Republic. His father was a marble cutter, who was always poor, and young Socrates often lamented that he had never had a teacher, and always wanted one. In appearance he was snub-nosed and thick lipped, his whole features being coarse and animal-like. He was so eccentric that he always went about ragged and barefooted, and often filthy and dirty. Even when enlisted in the Army he refused to wear sandals upon his feet, but marched through one entire campaign barefooted, oftentimes over fields of ice. He cared nothing about the fields, the hills, the mountains, and the beauties of nature that were around about the city of Athens, but spent his life upon the public streets, in the market place, or the gymnasium, debating, arguing, and reasoning with the men whom he chanced to meet. He never wrote a book or made a speech in public, except the one made at his trial. He never sought or held public office. He courted neither the rich nor the poor, but both alike were his friends, and he was their counselor. During his life Athens was aflame with debates and discussions on almost every conceivable subject. It was in these that he found his pleasure and delight.

In middle life Socrates married Xanthippe, and had he been so unfortunate as to have lived in the days of courts of domestic relations, he probably would have spent most of his time in the bridewell for his failure to support his wife and child. Xenophon says that Xanthippe was "the most unsupportable of all women who ever have been or ever will be." But Xenophon was a crusty old soldier, and had little use for the finer sensibilities. Socrates, when asked one day about his wife, said: "I married Xanthippe, as those who wish to be expert horsemen choose mettlesome horses, thinking if they can manage them, they can manage all." But so far as can be learned from the two friends, contemporaries and biographers of Socrates, Plato and Xenophon, Xanthippe not only frequently kicked over the dining-room table and threw dishes at the great philosopher, but she had every reason to do so,

for nowhere can it be ascertained that Socrates ever worked, or made the slightest attempt to provide even the common necessities for the family table. Indeed, Socrates contended that his business was with the soul of man, and not with his stomach, and that he had no time to work; that the care of the household was the work of women. So that, while the philosopher frequently dined with the great philosphers, generals, and men of wealth in Athens, Xanthippe remained in her miserable home with little to clothe herself and often nothing to eat.

The words always foremost on the lips of Socrates as he went in and out of the market places were, "Know thyself," and his delight was to engage in disputation with those who were thought to be wise in Athens, and by keen logic drive home an argument which would confuse his opponent. He delighted most to question the young men, often stating that it was useless to teach the old as they had but a short time to put in practice this teaching. In his daily controversies with the citizens whom he met upon the street, almost every question touching the moral, spiritual, and physical life was discussed. He liked to dwell upon such abstract questions as: What is truth? What is virtue? What is goodness? What is crime? What is honesty? What is religion?

The following dialogue with Thrasymachus illustrates the nature of his daily conversation:

Socrates: Listen! I proclaim that justice is nothing else but the interest of the stronger.

Thrasymachus: Wait, I am trying to understand you. I wish you would be a little clearer.

Socrates: Well, the forms of government differ. There are tyrannies, democracies, and aristocracies.

Thrasymachus: Yes, I know.

Socrates: And the government is the ruling power in each state.

Thrasymachus: Certainly.

Socrates: And these different forms of government make laws with a view to their several interests, and these laws which are made by them for their own interests are the justice which they deliver to their subjects. Then, as justice is for the interest of the stronger, and the stronger is often wrong, the weaker are commanded to do not what is for their interest, but for the injury of the stronger.

In another dialogue with Thrasymachus:

Thrasymachus: Does the just man try to gain any advantage over the unjust?

Socrates: If he did he would not be the small amusing creature which he is.

Thrasymachus: And he would be considered just or unjust if he tried to gain advantage over the unjust!

Socrates: He would. The just does not desire more than his like but more than his unlike, whereas, the unjust desires more than both his like and his unlike.

Socrates constantly urged that the wilful criminal or sinner was more to be praised than the unwilling one. He argued that one who disobeys the law because he thinks the law is wrong should be commended, because only by such disobedience will the evil in the law be corrected, and that one who fails to disobey the law merely because it is the law is weak, and not of value to the state.

Frequently, however, he engaged in dialogues upon the subject of music, of art, of learning, of education, and the science of government. In his eagerness to be always logical he was often led to some very absurd conclusions. It was some of these absurdities that finally led to the philosopher's arrest and trial.

During the reign at Athens of the thirty tyrants, the most despotic and bloodthirsty that had governed the Republic, it was openly charged that Socrates had been the friend, companion, and adviser of Critias, the most cruel of them all, and after this band of murderers had been executed, indignation ran throughout Athens against Socrates, because it was asserted these tyrants had received their inspiration from him. He was thereupon arrested and indicted, the indictment containing two counts:

First. It was charged that Socrates did not accept the religion recognized by his country, but attempted to introduce some new and strange deities of his own.

Second. He exercised an evil and corrupting influence over the young men of Athens.

The accusation was brought by Meletus, a struggling poet of Athens, who entertained toward Socrates bitter hatred, and who had sought to bring the philosopher into ridicule by writing and producing upon the stage a play entitled "The Comedy of the Clouds." The clouds were represented as the divinities of Socrates, who was introduced upon the stage suspended in a basket, and engaged in conversation with many young men of Athens, whom he advised concerning the best methods of evading the law and escaping prison. So strong had become the aversion to Socrates, and so determined were his prosecutors to get rid of him, that they engaged Polycrates, the ablest orator of Athens, to conduct the prosecution. Athens had at this time but two courts,—one the Areopagus, which formerly had jurisdiction only in capital cases. It was divided into ten different courts, which held their sittings in ten different quarters of Athens. Because of the fact that this court was almost entirely controlled by the nobility, violent opposition had arisen to it, and a little over one hundred years previous to the trial of Socrates a new democratic court was established in Athens, known as Heliæa. This was the popular court of Athens, and six thousand men chosen by lot were summoned to hold the courts. These were divided into ten groups, one group for each of the ten judicial districts. No other judges than these presided over the courts, which sat every day of the year. The court rooms were very large, to accommodate the public that thronged the courts often to aid the lawyers in influencing the judges by demonstrations for or against the accused. The verdict in many such trials was but the result of the aroused passions of the mob. The number of judges or jurors who were to try any given case was not fixed, and often ranged from one hundred to fifteen hundred persons. In the trial of Socrates five hundred men were summoned from the whole of Athens to act as judges. They received as compensation for their services a sum equal to 9 cents per day, and their decisions were by vote of the majority.

For a long time in the courts of Greece, no one was allowed to act as an attorney for the accused, but the accused was required to make his own defense. Later, however, the practice arose of permitting the accused to open his defense and then allow his attorney to make a further plea in his behalf. While originally the lawyer was not permitted to make a plea in court on behalf of his client, yet the lawyer could write his client's defense and the client commit it to memory and deliver it before the court. This practice, in a large measure, is responsible for the preservation of some of the most famous speeches of ancient times. While the law did not recognize the right of an attorney to collect a fee from his client, yet the practice soon obtained not only of allowing the attorney to collect a fee for his services, but he might also collect a fee from his client's opponent, and it frequently happened that one attorney wrote the speeches, both for the prosecution and the defense, and received two fees for so doing.

When Socrates was arraigned before the court he was penniless, but the services of many able attorneys were freely offered him, and by him declined. The chief witness upon the stand was Meletus, who had signed the indictment. In a long speech Meletus declared that Socrates did not believe in any gods, and particularly denied that the sun and moon were gods, and asserted they were but stone. He argued that Socrates, by advising the citizens of Athens how to disregard the law and escape punishment, was an enemy of the state, and that his daily conversations in the market place and at the gymnasium with the youth of Athens tended to incite the public against existing laws. He was cross-examined at great length by Socrates himself. After the prosecution had finished, Socrates addressed the jury and said in part:

"My judges and friends: I am devoted to you, but I shall obey God rather than you. I have spent all of my time going about among you persuading you, old and young alike, not to be solicitous about your bodies or your possessions,

but first of all and most earnestly to consider how to make your souls as perfect as possible. I have told you that wealth does not bring virtue, but rather virtue brings wealth and every other human good, private or public. If death is the journey to another place, and there, as many say, all the dead abide, what good, oh my friends and judges, can be greater than this! What would not a man give if he might converse with Orpheus, Hesiod, and Homer! Nay, if this be true, let me die again and again. Therefore, let judges be of good cheer about death and know of a certainty that no evil can happen to a good man even in life or after death. The hour of our departure has arrived and we go our ways, I to die, you to live. Which is better, God only knows."

After this speech had been delivered, the five hundred judges voted, and, by a vote of 259 for conviction and 241 for acquittal, the great philosopher was condemned to death. His execution was delayed for a month, and he was given an opportunity to escape, but refused. When the day came for his execution he calmly drank the juice of the hemlock, urging to the last that to die was the greatest gain of life. Alcibiades said of him: "He is the only man who, when I think of him, makes me ashamed of myself."

Greece has contributed more in art, literature, and learning to the world of to-day than any other nation. It has also contributed much to the fundamental law of every civilized nation. The world has profited much by the great laws of Lycurgus, which were forbidden by decree to be written down. It was always necessary that some wise man be found who could interpret them. This resulted in making Athens a lawyers' paradise. Everybody discussed the law, and no one could certainly declare what it was in any given case. These disputes often led to brawls and riots, and constant litigation arose from the most trivial causes. It has been said that from one fifth to one fourth of the population of Athens attended court every day.

So much opposition arose to the making of new laws that a law was proposed which provided that if any man entered the assembly to introduce a new law he should wear a halter about his neck, and if his law was not adopted, he should be hanged at once.

Solon, who gave to Greece her most perfect code of laws, caused a decree to be enacted that these laws should not be changed for one hundred years. He was constantly sought by all sides to interpret the meaning of the laws. So insistent, however, became the demands upon his time, that he fled from Greece and remained absent for ten years, feeling sure that during that time his laws would not be changed.

Socrates had much to do with humanizing the law. His sympathies were broad and his judgments were sane. He lives to-day as he did twenty-four hundred years ago, as a protest against every form of tyranny and that degeneracy which works the destruction of the strongest nations.

William N. Grenwill

Criteria For Making Public Utility Service Extensions

BY SAMUEL S. WYER

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IN THE last analysis, the consumers of a public utility are all mutually interested in each other's financial relation to the utility. It is the legal duty of utilities so to classify and fix their charges and financial relations with their consumers that the burdens of the utility's service shall be reasonably, justly, and equitably, but not necessarily equally, distributed over the service rendered its consumers.

Furthermore, it is self-evident that no person can be served by a utility without compensation without compelling others to pay the cost of such service. It is, therefore, to the interest of every consumer to have all utility service paid for as it is incurred. Every "dead beat" or "deadhead" patron is a social parasite that subsists on those who pay their bills. Every unpaid bill, or every uncompensated service charge assumed, or free service rendered, represents a loss that inevitably tends to increase the cost of service to the other consumers. As so well stated by the Wisconsin Railroad Commission, in Beloit Water, Gas & Electric Co. v. Beloit, 9 Wis. R. C. R. 250, an order requiring a utility to make an extension to its distributing system to serve remote customers, "to be just and effective, should be made with due regard to the magnitude of both the investment necessary and probable additional earnings to be gained thereby, including the return on the additional investment."

Abnormal real estate developments are the cause of many unprofitable service extensions. Over-real estate development is always an economic loss to the community in general, and the utility patrons in particular. In practically all cases where new additions are laid out the real estate promoters ought to guarantee the cost of the utility extensions so as to relieve the utility from participation in the real estate hazard. Lines hastily laid in doubtful additions must nearly always be relaid later on, when street improvements are made, thus making a double burden on either the utility or the public. A street that is not worth improving at the time it is laid out ought not be considered worth serving with utility service when such service must be made at the expense of a public utility.

If the remote customer does not pay his prorated share of the cost of bringing the service to him, he will be getting the service at less than cost, and this will be a clear case of discrimination as against other consumers. This brings us, therefore, to the fundamental principle, that each new extension must either be, or be capable of being, made self-supporting. That is, the revenue to be derived from the extension must ultimately be at least equal to the cost of the service. Thus, the revenue from a service extension must be large enough to meet the following six factors:

I. Fixed Costs.
   1. Depreciation on investment.
   2. Interest on investment.
   3. Taxes on investment.

II. Variable Costs.
   1. Average of the expense per consumer.
   2. Cost per foot for maintaining mains or extensions.
   3. Production cost per "M" cu. ft. of gas delivered to the new extension compensated for leakage.

The service extension that does not

meet the preceding requirements is parasitic in its nature, and unjust and inequitable to the existing consumers. The following judicial opinions are of interest:

Montana Board of Public Utility Commissioners.—Schedule of rates and rules ordered for Northern Idaho & Montana Power Co. June 17, 1914:

"The company will not extend its secondary lines more than 300 feet for one electric-light consumer. Extensions of line for power services will be made on the basis of 100 feet for each horse power connected, based on a minimum service of one year. Extensions of more than 1,000 feet of primary or secondary lines will be made only upon special arrangement."

California Railroad Commission.—Warren v. Pacific Gas & Electric Co. P.U.R.1915A, 702:

"The construction necessary for the extension of the lines of a gas and electric company to certain consumers was apportioned between the company and the consumers, and the company was ordered to complete its portion thereof within twenty days after completion by the consumers, where it appeared, after consideration of the costs of extending such service and probable revenue therefrom, that it would be unreasonable to require the company to extend the service entirely at its own expense."

"An application to require a gas and electric company to extend its service to certain consumers at its own expense was of necessity considered primarily as an individual local problem, owing to the fact that the evidence submitted was confined to the costs of, and probable revenues from, the particular extension."

California Railroad Commission.—In Re Pacific Gas & Electric Co. P.U.R. 1915A, 722:

"An extension of service contract between a gas and electric company and certain prospective customers, by which the company and the customers each agree to construct a portion of the lines, the customer guarantying a yearly minimum return, was approved until such time as the cost and conditions of the service should be investigated by the Commission."

Arizona Corporation Commission.—Arizona Corporation Commission v. Pacific Gas & Electric Co. P.U.R.1915A, 996:

"A gas and electric company was ordered to extend its mains and service wires into a newly developed addition within the city limits where fourteen residences of a substantial type were either in the course of construction or completed, it appearing that the construction of additional houses and occupancy of the present houses would be delayed, if not absolutely defeated, unless such service was rendered."

"A public service corporation occupying an exclusive field should hold itself in readiness to make reasonable extensions to serve new districts."

New Jersey Board of Public Utility Commissioners.—In Sigrist v. Public Service Gas Co. P.U.R.1915A, 1024:

"A gas company was not required to extend its mains 540 feet in order to furnish complainant's residence with gas, it appearing that the estimated revenue was $27 per annum and the estimated cost of furnishing the service, including an allowance for return on the investment, was $43.30, the Commission not being of the opinion that such an extension would be reasonable or practicable, or would furnish sufficient business to justify its construction and maintenance."

"To justify the Commission in ordering an extension of gas mains a distance of 540 feet where the estimated revenue was placed at $27 per annum and the estimated cost of furnishing the service, including an allowance for return on the investment, at $43.30, an amount of revenue would be required which would exceed by 50 per cent the estimated revenue to be obtained."

New Jersey Board of Public Utility Commissioners.—In Ball v. Public Service Gas Co. P.U.R.1915B, 173:

"A gas company was ordered to extend its mains in order to supply consumers guarantying an annual revenue which the Commission deemed sufficient to justify such extension and maintenance."

"In view of all the testimony in the case, and in view of the fact that the petitioners, owners of the property, have

filed with the company an agreement assuring to the company an annual revenue of $26.74 from each of the two houses, the Board is of the opinion and finds that this 'extension is reasonable and practicable, and will furnish sufficient business to justify the construction and maintenance of the same.' Upon this assurance, and the further assurance of the owners to secure not less than 2 feet of cover above the top of the pipe, an order requiring said extension will be entered."

South Dakota Board of Railroad Commissioners.—In Re Rates, Charges, & Practices of Telephone Companies, P. U.R.1915A, 1032:

"A telephone company undertaking to furnish service in a given territory will not be compelled to build an unreasonable distance in order to give such service, what is a reasonable distance depending upon the facts in each case."

New York Public Service Commission, Second District.—In North Tonawanda v. Niagara Light, Heat & P. Co. P.U.R. 1915B, 73:

Natural gas, with no regeneration to the limited, constantly decreasing supply, unless supplemented by new fields, presents an interesting service-extension problem that must be faced. Since the supply is fixed by nature, no more consumers ought to be served than can be given adequate service. Regardless of how many extensions the company may make, it cannot increase the natural supply.

"There is nothing in the law which prohibits a gas company from giving to particular persons or a certain locality a preference in the matter of its service of gas, and thus discriminating against other persons and other localities; and it is only when such preference is undue or unreasonable, and the discrimination is unjust, that this Commission may intervene and correct such practices.

"More than that,—consideration must be given to a safe and adequate service on the part of the company, within its means and facilities; and if service of this character is being given to a comparatively few customers in a certain locality, with the limited amount of gas available for such purpose, it is manifestly the duty of this Commission to permit the continuance of such service rather than order the company to turn its gas into a larger field where a safe and adequate service could not be given."

Supreme Court of the United States.—Washington ex rel. Oregon R. & Nav. Co. v. Fairchild, 224 U. S. 528, 56 L. ed. 869, 32 Sup. Ct. Rep. 535:

"There can be no doubt of the power of a state acting through an administrative body, to require railroad companies to make track connection. But manifestly that does not mean that a Commission may compel them to build branch lines, so as to connect roads lying at a distance from each other; nor does it mean that they may be required to make connections at every point where their tracks are close together in city, town and country, regardless of the amount of business to be done, or the number of persons who may utilize the connection if built. The question in each case must be determined in the light of all the facts, and with a just regard to the advantage to be derived by the public and the expense to be incurred by the carrier."

Samuel S. Wyer

Parallelism In All Laws

BY A. A. GRAHAM

Topeka, Kan.

ALL questions or controversies, whether political, social, physical, or legal, are fundamentally parallel, differing only in the conclusiveness of the facts and the certainty of the laws. The greatest controversy ever waged was as between the geocentric and the heliocentric theories,—Science taking the affirmative, that the sun is the center of our system, and a corporation, the Church, the opposition, that the earth was such center.

The plaintiff, Science, presented evidence leading up to the fact, and eventually completed the demonstration.

The defendant, the Church, entirely ignored investigation to discover the fact, and relied on argument and conclusion.

The case thus presented was tried before the world, the country, as the jury, resulting in a verdict for plaintiff, as a finding of fact, that the sun is the center of our system.

In the large view of the case, corresponding to the correct determination of any hidden fact or public controversy, the fact only is important; but, when private interests, more particularly corporate than individual, have been built upon, or are supported by, certain theories, then the contestants seek to maintain their theories, and the fact is always ignored or sought to be concealed. If, now, the fact becomes known, open, notorious, and indisputable, the interests involved then seek perpetuity on other grounds.

This has been, and will ever be, the case on the settlement of every great controversy.

The fact now determined, the jury, the world, are discharged from further consideration of the case, the controversy settled, and argument seen to have had no place in the determination.

The law of the case is now to be determined.

Along comes Kepler, as the judge, and announces his "Three Laws," declaratory of the principle, as the law of the case, controlling the operation of the solar system, already settled as a fact; but, by no means, all the law of the system, although sufficient for the settlement, on principle, of the specific question in controversy, the central body of our system.

The fact was found, the law ascertained and applied, the case finally determined and reported, so that all the world has knowledge.

A fact has been determined, and sustained or justified on principle, on law.

Using this case as information and as a precedent, comes now Leverrier, and, applying the principle and extending the operation, finds the law of planetary aberration conforming to mechanical rules in relation to each other in their path around the sun; and, in the case of Uranus to an unknown mass still more distant from the sun, a hypothetical planet.

Turning his telescope, following the index of the aberration of Uranus, as demonstrating the existence of a principle rather than a fact, Leverrier discovered Neptune.

The law is here used for the discovery of the fact. This is only an illustration of the application of universal law or general principles in the determination of facts, whether physical or moral.

Announcement was made several years ago of the observation of aberrations in the path of Neptune to indicate the existence of a still more remote planet.

If this be true, we now positively know of the existence of such planet, although the distance may be so great and the light so faint as never to be seen.

Here we have the application of the law, the principle, to the new case, although existing only as an hypothesis.

All law is thus seen to present parallels.

A Brief Statutory History of the United States Department of Agriculture

BY FRANCIS G. CAFFEY

Solicitor of the Department of Agriculture

[Ed. Note.—The earlier part of Mr. Caffey's instructive article appeared in the February Case and Comment.]

THER branches of the department are the Division of Publications, which supervises the publication work of the department, the Division of Accounts and Disbursements, which handles its fiscal affairs, and the Library. The last two are, administratively, closely related to the Secretary's office, but are recognized as separate units by the departmental appropriation acts. The Chief of the Division of Accounts and Disbursements is also Disbursing Clerk of the department, and, as such, is governed by various statutes applicable to that officer.

Miscellaneous activities of the department include encouragement and aid in the agricultural development of government reclamation projects, and assistance to settlers thereon; experiments and demonstrations in live stock production in the cane sugar and cotton districts of the United States; and investigations of the grading, weighing, and handling of naval stores.

The plant quarantine act is administered by the Federal Horticultural Board, which is provided for therein. The insecticide act is administered jointly by the Bureaus of Chemistry, Entomology, Plant Industry, and Animal Industry through the medium of a board, known as the Insecticide and Fungicide Board, created for the purpose by the Secretary of Agriculture.

Regulatory Statutes.

There are numerous statutes, or sets of statutes, administered by the department, confined almost entirely to various kinds of substantive law enforcement, as distinguished from its scientific and educational work. In connection with these the Department of Agriculture, through the Solicitor, co-operates largely with the Department of Justice, and to some extent with the Department of the Interior.

The first regulative function conferred on the Department of Agriculture was by act of May 29, 1884,[79] which created the Bureau of Animal Industry. The provisions of this act were aimed chiefly to prevent the exportation and the interstate shipment or transportation of live stock affected with contagious, infectious, or communicable diseases. The act was administered in part by the Secretary of the Treasury and in part by the Commissioner of Agriculture.

Since 1884 administrative functions have been conferred on the Secretary of Agriculture by sundry acts. In addition to the statutes relating to the control and utilization of the national forests, which have already been discussed, the principal regulative acts that have been placed under his administration are the meat inspection act;[80] the cattle quarantine act;[81] the diseased animal transportation acts;[82] the twenty-eight hour act;[83] the virus act;[84] the food and drugs act;[85] the insecticide act;[86] the plant quarantine act;[87] the seed importa-

[79] Act of May 29, 1884, supra.
[80] Act of June 30, 1906, 34 Stat. at L. 669, 674.
[81] Act of March 3, 1905, 33 Stat. at L. 1264.
[82] Act of May 29, 1884, supra; Act of February 2, 1903, 32 Stat. at L. 791.
[83] Act of June 29, 1906, 34 Stat. at L. 607.
[84] Act of July 1, 1902, 32 Stat. at L. 728; Act of March 4, 1913, 37 Stat. at L. 828, 832.
[85] Act of June 30, 1906, 34 Stat. at L. 768.
[86] Act of April 26, 1910, 36 Stat. at L. 331.
[87] Act of Aug. 20, 1912, 37 Stat. at L. 315.

tion act;[88] the Lacey act;[89] the migratory bird act;[90] and the United States cotton futures act.[91]

The meat inspection act is primarily a health measure, designed to guard the public against the imposition of unwholesome meats and meat food products. In general, it provides for the maintenance by the Department of Agriculture of a system of inspection of establishments in the United States in which cattle, sheep, swine, or goats are slaughtered, or the carcasses or meat food products of which are prepared, for interstate or foreign commerce, and prohibits the shipment or transportation of such articles in interstate or foreign commerce unless they bear the mark of Federal inspection and approval as required by the act. By the tariff act of October 3, 1913,[92] the Secretary of Agriculture was vested with similar control of meats imported into this country. About 60 per cent of all cattle, sheep, swine, and goats slaughtered in the United States are killed, and the products therefrom prepared, under inspection by the department. The provisions of the meat inspection act were extended to apply to reindeer in 1914.[93] In addition to the inspection provided for by the meat inspection act, the department is charged with the inspection of dairy products intended for export, and of process or renovated butter,[94] and with the sanitary inspection of renovated butter factories.[95]

The cattle quarantine act authorizes the Secretary of Agriculture to quarantine any state, territory, or the District of Columbia, or any portion thereof, on account of the existence therein of contagious, infectious, or communicable diseases of animals, and prohibits the movement, except under certain conditions, of any cattle or other live stock from the quarantined areas into any other state, territory, or the District of Columbia.

The diseased animal transportation acts prohibit the transportation, delivery for transportation, and driving on foot, in interstate commerce, of live stock affected with any contagious, infectious, or communicable disease, and authorize the Secretary of Agriculture to take measures to prevent the exportation and interstate transportation of live stock from any place within the United States where he may have reason to believe such diseases may exist, and to make regulations and take measures to prevent the introduction into the United States, and the dissemination among the various states and territories, and in the District of Columbia, of the contagion of such diseases. Another act[96] authorizes the Secretary of Agriculture, under certain conditions, to regulate the importation of neat cattle, sheep, and other ruminants, and swine, and to inspect those that are imported or that are intended for exportation; prohibits the importation of those that are diseased or infected with disease, or which have been exposed to such infection within sixty days next before their exportation; and forbids those found upon inspection to be infected or exposed to infection so as to be dangerous to other animals to be placed upon any vessel for exportation.

The twenty-eight hour act prohibits the confinement in railroad cars and boats of animals in course of interstate transit for a period longer than twenty-eight hours without being unloaded for feed, water, and rest, for five hours, except that, upon proper written request in advance by the owner or person in custody of the shipment, the period of confinement may be extended to thirty-six hours; provided that carriers may relieve themselves of the duty of unloading by supplying ample facilities for feed, water, and rest on board their cars or boats.

The virus act regulates the interstate shipment, the importation, and the preparation and sale in the District of Columbia and elsewhere under the jurisdiction

[88] Act of Aug. 24, 1912, 37 Stat. at L. 506.

[89] Act of May 25, 1900, 31 Stat. at L. 187; Act of March 4, 1909, 35 Stat. at L. 1088, 1137.

[90] Act of March 4, 1913, 37 Stat. at L. 828, 847.

[91] Act of Aug. 18, 1914, 38 Stat. at L. 693.

[92] Act of Oct. 3, 1913, 38 Stat. at L. 114, 159.

[93] Act of June 30, 1914, supra.

[94] Act of May 23, 1908, 35 Stat. at L. 251, 255; Act of May 9, 1902, 32 Stat. at L. 193.

[95] Act of Aug. 10, 1912, 37 Stat. at L. 269, 273.

[96] Act of Aug. 30, 1890, 26 Stat. at L. 414.

of the United States, of viruses, serums, toxins, and analogous products intended for use in the treatment of domestic animals.

The food and drugs act is primarily intended to enforce honest labeling of foods and drugs; and, secondarily, to conserve health in so far as it is affected by these articles. In general, it prohibits the manufacture within any territory, including the insular possessions of the United States, or the District of Columbia, and the shipment in interstate or foreign commerce, of foods and drugs which are adulterated or misbranded within the meaning of the act. It also contains machinery for preventing the importation of adulterated foods and drugs.

The provisions of the insecticide act are patterned, almost literally, after the food and drugs act, except that they are made applicable to insecticides, Paris greens, lead arsenates, and fungicides, instead of foods and drugs.

The plant quarantine act is designed to prevent the introduction and spread of plant diseases in the United States. It contains various provisions governing the quarantine of portions of the United States on account of the existence of plant diseases, and regulating the interstate movement from quarantined areas, and the importation of nursery stock and other plants and plant products.

The seed importation act forbids the importation of specified classes of seeds which are adulterated or unfit for seeding purposes as defined in the act, except that such seeds may be admitted under bond, on condition that they be recleaned and the refuse disposed of as required by the act and the regulations of the Secretary of Agriculture thereunder.

The Lacey act is intended primarily to assist the states in the conservation of the game supply of the United States, and to check the importation of birds and animals that may be injurious to agriculture or horticulture. Its chief provisions regulate the importation of birds and animals, and prohibit, under penalty, the shipment and the transportation in interstate commerce of any foreign animals or birds, the importation of which is prohibited, or the dead bodies, or parts thereof, of any wild animals or birds which are killed or shipped in violation of the laws of the state, territory, or district in which they were killed or from which they were shipped. It also requires the conspicuous labeling of packages of game shipped in interstate and foreign commerce.

The migratory bird act is another measure designed to conserve the game supply of the United States. The objects of its protection are the insectivorous and other birds which in their northern and southern migrations pass through or do not remain permanently within the borders of any single state or territory. These are declared to be within the custody and protection of the government of the United States. The Department of Agriculture is authorized to divide the country into districts and to prescribe closed seasons for migratory birds within said districts. It is made a criminal offense to kill, seize, or capture any of such birds during a closed season, or otherwise to violate any of the provisions of the act or the regulations thereunder.

The cotton futures act is, on its face, primarily a taxing statute, but it also operates to regulate the business of cotton exchanges in the United States with the view of eliminating the existing evil features of future dealing in cotton. It imposes generally on all contracts of sale of cotton for future delivery, made at, on, or in any exchange, board of trade, or similar institution or place of business, a tax of 2 cents for each pound of cotton involved in such contracts. It then provides for exemption from this tax of such contracts if they comply with certain conditions specified in the act, which are aimed to correct the present evils of future dealing, with adequate machinery for carrying the scheme into effect.

Constitutionality.

Owing to the differences in character of the two kinds of statutes affecting the department, the one merely providing money for carrying on the work and the other prescribing rules for the conduct of citizens, wholly separate considerations bear upon the questions of their validity. In addition, each regulative law must be examined on its own merits.

During the debates over adopting, and soon after the adoption of, the Constitution, many of our leading publicists expressed themselves in favor of agriculture as an object which ought to receive the special care and consideration of the national government. They differed, however, as to the nature of the aid or encouragement that should be given. Among those who so expressed themselves were George Washington,[97] Thomas Jefferson, [98] James Madison,[99] Gouverneur Morris,[100] Charles Pinckney,[101] and William R. Davie,[102] all of whom were delegates in the convention which framed the Constitution. Washington, when President, suggested the establishment by Congress, at the seat of government, of a national board of agriculture to look after the interests of the farmer.[103] In the constitutional convention, Alexander Hamilton indicated his belief that agriculture was one of the great objects to be secured by a national or general government.[104] Later, during the same year, in the Federalist, paper No. 17, he considered it as a matter that should be provided for purely by local legislation. Some years afterwards, in the draft submitted by him as a basis for President Washington's address to Congress, on December 7, 1796, Hamilton again expressed the view that the subject was one to be treated from a national standpoint.[105]

Many lawyers and lay students of our form of government have especially questioned the power of Congress to authorize any investigative, experimental, or educational work relating to agriculture, such as is now, and for many years past has been, performed by the United States Department of Agriculture. Without entering into a full consideration, it is sufficient, for the purposes of this article, to suggest that article I. § 8, clause 1, of the Constitution, confers on Congress ample authority to enact the existing legislation on the subject. This provides that:

> The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States.

There appear to be no cases adjudicating the precise point, but the general extent of the authority of Congress under this clause formed an important subject of discussion by our early statesmen and jurists, and has been alluded to by the courts.

The words, "provide for . . . the general welfare," have been variously interpreted. The respective contentions may be roughly divided into four classes: First, that the words are wholly meaningless; second, that they confer on Congress an independent power to enact any measure that may provide for the general welfare; third, that they convey no power in themselves, but limit the purposes for which the taxing power may be exercised to those expressed in, or necessarily incident to, the other enumerated powers conferred on Congress by the Constitution; and fourth, that they convey no power in themselves, but limit the purposes for which the taxing power may be exercised to those which conduce to the general interests of the United States, whether they be expressed in, or incident to, one of the other enumerated powers or not.

The first and second views are extreme, and are not now seriously sought to be maintained, although in the past they had such supporters as Patrick

[97] First Annual Address to Congress, Jan. 8, 1790, Messages and Papers of the Presidents, vol. 1, p. 66.

[98] First Inaugural Address, March 4, 1801, Messages and Papers of the Presidents, vol. 1, pp. 323, 324.

[99] First Inaugural Address, March 4, 1809, Messages and Papers of the Presidents, vol. 1, p. 468.

[100] In the Federal Constitutional Convention, Aug. 20, 1787, Elliot's Debates, vol. 5, p. 446.

[101] In the South Carolina Constitutional Convention, May 14, 1788, 4 Elliot's Debates, p. 322.

[102] In the North Carolina Constitutional Convention, July 24, 1788, 4 Elliot's Debates, pp. 17, 20.

[103] Eighth Annual Address to Congress, Dec. 7, 1796, Messages and Papers of the Presidents, vol. 1, p. 202.

[104] June 19, 1787, Elliot's Debates, vol. 1, p. 427.

[105] Hamilton's Works, vol. 7, p. 612.

Henry,[106] George Mason,[107] Roger Sherman,[108] and Levi Woodbury.[109] The issue is chiefly between the third and the fourth view. The principal exponents of the third were James Madison,[110] and Thomas Jefferson,[111] and of the fourth, John Smilie,[112] James Wilson,[113] James Monroe,[114] and Justice Story.[115]

The fourth proposition seems to be the most rational and logical interpretation of the clause. Briefly, the line of reasoning in support of it is this: The power given to Congress by the tax clause is a distinct and independent power, as complete as that to regulate commerce, or as that to coin money, or as any of the other enumerated powers. It is not absolute, however. It is not a power to exercise any function other than that to raise money, and, incidentally, to appropriate and expend it; is limited by the provision that duties, imposts, and excises must be uniform throughout the United States; and is confined to three specified purposes, namely, (1) to pay the debts of the United States, (2) to provide for the common defense of the United States, and (3) to provide for the general welfare of the United States. The general welfare of the United States is a term of broad significance, including any purpose which may promote the general interests of this country. The general interests of agriculture are an important phase of the general welfare.

Among those adopting this course of argument, some regard Congress as the sole judge as to what is for the general welfare; while others contend that its discretion is reviewable by the courts. In either case, the constitutionality of the various appropriations by Congress, to carry on experimental, investigative, and educational work in agriculture, would be sustained.

The most able and convincing opinion on this question is by Story in his work on the Constitution, in the course of which, quoting Hamilton, he says, vol. 1, § 978, with reference to the taxing power:

> It is, therefore, of necessity left to the discretion of the national legislature to pronounce upon the objects which concern the general welfare, and for which, under that description, an appropriation of money is requisite and proper. And there seems no room for a doubt that, whatever concerns the general interests of learning, of agriculture, of manufactures, and of commerce, are within the sphere of the national councils, so far as regards an application of money. The only qualification of the generality of the phrase in question, which seems to be admissible, is this, that the object to which an appropriation of money is to be made must be general and not local,—its operation extending in fact, or by possibility, throughout the Union, and not being confined to a particular spot. No objection ought to arise in this construction from a supposition that it would imply a power to do whatever else should appear to Congress conducive to the general welfare. A power to appropriate money with this latitude, which is granted in express terms, would not carry a power to do any other thing not authorized in the Constitution, either expressly or by fair implication.

As applied to appropriations by Congress to promote the general interests of agriculture in the United States, if assailed in the courts, it is fairly certain that this view would prevail. Not only is it sustained by highly persuasive reasoning, but it is supported by the action of Congress in making such appropriations for the past seventy-five years. In a case such as this, if there were doubt, the practical construction of the Constitution by legislative action is given great weight by the courts.[116]

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[106] In the Virginia Constitutional Convention, June 14, 1788, 3 Elliot's Debates, 441,

[107] In the Virginia Constitutional Convention, June 14, 1788, 3 Elliot's Debates, 441, 442.

[108] The Journal of New York of Jan. 17, 1788; Davis on the Judicial Veto, p. 104.

[109] Register of Debates in Congress, Feb. 23, 1830, pp. 181, 182, 183 and 187.

[110] The Federalist, No. 41.

[111] Views on the Incorporation of a Bank, February 15, 1791, 4 Jefferson's Correspondence, 524, 525.

[112] McMaster and Stone, Pennsylvania and the Federal Constitution, pp. 269, 768.

[113] McMaster and Stone, Pennsylvania and the Federal Constitution, pp. 414, 415.

[114] Views on the subject of internal improvements, May 4, 1822, Messages and Papers of the Presidents, vol. 2, pp. 144–183.

[115] Story, Const, 5th ed. vol. 1, §§ 975 et seq.

[116] Stuart v. Laird, 1 Cranch, 299, 2 L. ed. 115; Marshall Field & Co. v. Clark, 143 U. S. 649, 683, 36 L. ed. 294, 307, 12 Sup. Ct. Rep. 495.

The establishment and control of national forests in the western states are based on the power of Congress, under article IV, § 3, of the Constitution, to "dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States," and have been expressly upheld on this ground by the Supreme Court of the United States.[117]

The purchase of lands for national forests in the eastern states under the Weeks law is based upon the power of Congress, under article I, § 8, of the Constitution, to regulate commerce with foreign nations and among the several states. The preservation of the navigability of navigable watercourses of the United States is essential to the existence of commerce thereon, and the protection of the watersheds of such watercourses is deemed essential to the preservation of this navigability. The act concerns itself specifically with the protection of such watersheds, and may thus be said to tend directly to regulate an essential feature of interstate commerce.

The various regulatory acts administered by the Department of Agriculture, with the exception of the migratory bird act and the cotton futures act, are likewise based on the power of Congress under the commerce clause. They are, in effect, an exercise of what may be called the police power of Congress over interstate and foreign commerce, and, within the proper scope of their operation, are designed to aid in the protection of the public health, or in safeguarding the people against fraudulent impositions, or in securing other public interests of a like nature.

The cotton futures act rests upon the power of taxation conferred on Congress by the Constitution (article I, § 8, clause 1). In view of the broad latitude which is allowed to Congress, in the exercise of the power, as recognized by decisions of the United States Supreme Court, there seems to be no sound basis for doubting the validity of this statute.[117a]

The migratory bird law was upheld recently by Judge Elliott in United States v. Alfred M. Shaw, in the District Court of the United States for the District of South Dakota (unreported); but was held to be unconstitutional in the case of United States v. Shauver in the District Court of Arkansas,[118] and in the case of United States v. McCullagh, in the District Court of Kansas.[118a] In the Shauver Case the argument in support of the constitutionality of the act was that migratory birds are either the property of the United States or of the several states; if of the United States, then the law is constitutional as an exercise of a property right granted by the Constitution; if, however, such birds are the property of the several states while within their bounds, then the passage of birds in periodic migrations among the states constitutes interstate commerce, and the act is constitutional as an exercise of the power to regulate interstate commerce. These contentions were overruled by the lower court, and the case is now pending in the Supreme Court of the United States.

The constitutionality of the twenty-eight hour act, the food and drugs act, and the Lacey act, respectively, have been upheld by decisions of the lower Federal courts.[119] The constitutionality

[117] United States v. Grimaud, 220 U. S. 506, 55 L. ed. 563, 31 Sup. Ct. Rep. 480; Light v. United States, 220 U. S. 523, 55 L. ed. 570, 34 Sup. Ct. Rep. 485.

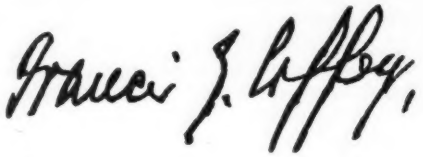
[117a] In Hubbard v. Lowe, 226 Fed. 135, decided by the District Court of the United States for the Southern District of New York in October, 1915, since the above was written, it was held that the cotton futures act is unconstitutional, solely upon the ground that, within the meaning of Article I, section 7, of the Constitution, the bill from which the statute resulted originated in the Senate; no other point was decided. The case is now pending on writ of error in the Supreme Court. See address delivered before Alabama State Bar Association at Montgomery, Ala., July 10, 1915, Service and Regulatory Announcements No. 5, pp. 51–66, Office of Markets and Rural Organization, United States Department of Agriculture; Proceedings of Thirty-eighth Annual Meeting of Alabama State Bar Association, 1915, vol. 38, pp. 170–205.

[118] 214 Fed. 154.

[118a] 221 Fed. 288; Seven Cases v. United States, 239 U. S. 510, 60 L. ed. —, 36 Sup. Ct. Rep. 190.

[119] Southern P. Co. v. United States, 96 C. C. A. 252, 171 Fed. 360; Shawnee Mill. Co. v. Temple, 179 Fed. 517; United States v.

of the food and drugs act, which is fairly representative of this type of legislation, has, furthermore, been expressly upheld by the United States Supreme Court in one case,[120] and recognized by it in a number of other cases.[121] The validity of each of the other legislative acts, with the administration of which the department is charged, except the migratory bird act and the cotton futures act, rests upon the same principles as that of the food and drugs act, and, it is safe to assume, would be sustained by the United States Supreme Court on the same grounds.



420 Sacks of Flour, 180 Fed. 518; United States v. 74 Cases of Grape Juice, 181 Fed. 629; Rupert v. United States, 104 C. C. A. 255, 181 Fed. 87.

[120] Hipolite Egg Co. v. United States, 220 U. S. 45, 55 L. ed. 364, 31 Sup. Ct. Rep. 364.

[121] Savage v. Jones, 225 U. S. 501, 56 L. ed. 1182, 32 Sup. Ct. Rep. 715; 443 Cans of Frozen Egg Product v. United States, 226 U. S. 172, 57 L. ed. 174, 33 Sup. Ct. Rep. 50; Hoke v. United States, 227 U. S. 308, 322, 57 L. ed. 523, 33 Sup. Ct. Rep. 281, Ann. Cas. 1913E, 905, 43 L.R.A.(N.S.) 906; McDermott v. Wisconsin, 228 U. S. 115, 57 L. ed. 754, 33 Sup. Ct. Rep. 431, Ann. Cas. 1915A, 39, 47 L.R.A. (N.S.) 984.

The Why of Litigation.

Why is folks all de time a-suin,
Each seekin' sum 'vantage ob de uddeh,
When da's things dey might be doin'
Dat would get dem 'long a good deal fuddeh?

But dey jes' seem to r'ar and fuss
And fill de cote as full ob liddigation
As, from thinkin' deir cause is jus',
Dey, demselves, is full ob indignation.

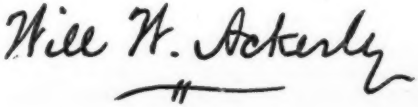
One is claimin' lots ob damages,
All de jury will allow,
'Cause, he says, all his cabbages
Done been et up by his neighbor's cow.

Anuddeh's filed a 'junction bill,
'Cause his tenant's committin' waste
By cuttin' all de timbeh on de hill
And sellin' it in a-mighty haste.

And anuddeh wants a separation
As quick as she can land it,
'Cause her old man cusses like de nation,
And she don't intend to stand it.

But why do folks purfur to liddigate,
And all deir money spend,
When dey can simply a'bitrate,
And hab a little left to lend?

Well, I don't know what uddehs say,
Dat to dem a'pear de causes,
But to me, it's jes' Gawd's own 'pointed way
Ob takin' care de lawyehs.



Literary Law

BY MARVIN LESLIE HAYWARD

Of the Hartland (N. B.) Bar

OF ALL my fellow students at college Earle Logan was the richest, most eccentric, and at the same time one of the most likeable fellows I have ever met, and after graduating he took up the law course at Stanvard University.

His reasons for deciding to study law illustrate one phrase of his eccentric disposition. The summer before graduation he had taken a trip to India, as he had an ambition to shoot a tiger from the back of a moving elephant.

Up in the Indian hill country, where many old Hindu customs still prevail, disputes frequently arise as to the legal effect of these customs, and such cases are frequently carried on appeal to the English Judicial Committee of the Privy Council.[1]

In one of these remote villages Earle found a big celebration in full swing, and was told by his trusty interpreter that it was in honor of a new god whose worship was being thus ushered in by appropriate ceremonies. This god, apparently, was an improvement over the usual run of Hindu deities, for he had intervened and restored to the people of the village the benefits of an old and disputed custom, together with their ancient rights and privileges.

"Who is this new god?" Earle inquired.

"He lives in London," was the reply, "and his name is 'the Judicial Committee of the Privy Council.'"

"If the law is as powerful as that," Earle told us on his return, "it's the study for me."

He was, however, as eccentric a lawyer as he had been a student. Before he had been practising a month he decided that he would handle no cases unless his client was in the absolute right of the matter, and his private income allowed him to do so with impunity.

This, of course, was all right in theory and quite feasible for one as rich as Earle, as he could afford to sit back and sift his cases, just taking the ones that suited his fancy.

As for myself, I was too poor to be idle or to indulge in any such radical theories, and at the end of a couple of years I had a pretty good position on the editorial staff of the "Evening Journal and Gazette."

During my spare time I had scribbled many short stories, some of which had been sold, and slowly and laboriously I had added chapter after chapter to what I felt certain would one day be hailed as "the great American novel."

In the meantime I had fallen in love with Nellie Harmon, the charming and only daughter of old Donald Harmon, the head of the firm of Harmon & Company, the great book-publishing moguls.

The same day I met Nellie I started rewriting my novel from the beginning, and as far as possible brought the heroine up to Nellie's standard of beauty and general attractiveness. But when I suggested to Harmon that I would like to pay my addresses to his daughter, he was as gruff as the bromidic papa of an amateur novel, and declared that Nellie would never marry an obscure newspaper man like myself.

"I believe I can make good in the writing game," I assured him with all the confidence of youth.

"That's what all the cheap hacks think," he snarled, and practically ordered me out.

His cold, sneering tone and his con-

[1] See Sir H. S. Maine's Village Communities. The English "Law Reports, Indian Appeals" are concerned entirely with these cases. Debi Mangal Prasad Singh v. Mahadeo Prasad Singh, L. R. 39 Ind. App. 121 is a typical one.

temptuous references to my literary ambitions angered me as nothing else could have done. I went home and tackled my book manuscript in a frenzy of energy. For three months I worked at it almost incessantly. Worked in the deepest depths of despair and in those periods of exalted intoxicated thought which are the heritage of golden youth. And in every paragraph, every line I wrote, Nellie's face appeared between me and the page and spurred me on to greater efforts. I was always glad, after I met Nellie, that I remembered one sentence at least from my college literature. "Her golden hair," it read, "like bronze light, adorned the oval ivory of a face the divine Diana or Mother Venus might have envied."

Then when completed, I shipped it to Harmon & Company, under an assumed name, and dropped into a sound sleep, the first in weeks.

Along with the manuscript I sent a brief letter, stating that I would be glad for him to undertake its publication on his "usual terms."

About a week later I received a letter from him, stating that it was the best manuscript which the house had received for years, and offering to pay me $4,000 outright or publish it on the usual royalty basis. For the moment I could hardly credit the evidence of the cold-typed page that danced before my unbelieving eyes.

I had triumphed. I had put one over on Harmon. I, the cheap hack.

I was shrewd enough, however, not to disclose my identity at once, for I felt certain that if he learned the truth he would have thrown the book back on my hands, and for the same reason I did not care to have him publish it on a royalty basis, so I accepted his cash offer, deposited his check to my credit, and figured that I was certainly in a position to talk to Mr. Harmon when the proper and psychological moment arrived.

But I soon found that I had not given him credit for being half as sharp as he was, for when I called on him a few days later, convinced him that I was the cheap hack who had written the book he had praised so highly, and at the same time demanded that he revise his former opinion of me and withdraw his opposition, he never turned a hair, but simply said that he could fix that part of it and my book would never see the light of day.

Never be printed. Were there some points in the writing game I had overlooked after all?

"But you can't do that," I replied, astounded at his proposal and the obvious results of his threatened course. "You have accepted the manuscript and are bound to publish it."

"Haven't I paid you for it?" he demanded calmly.

"You have," I admitted, regretting at the same time that I had been in such a hurry to deposit his check.

"Then," he replied, "the manuscript is mine to do with as I please the same as any ordinary article of merchandise. I can publish it, or put it in the vault, or burn it, or do whatever I choose, and you have no remedy."

"But I will return you your money and take back the manuscript, and have it published elsewhere," I declared, seeing that he evidently had me in a deep and dangerous hole of my own digging.

Harmon's sneering laugh was not reassuring.

"You may be a good writer, but you have very little knowledge of business, otherwise you would know that when a piece of personal property is sold and paid for, the seller cannot recover possession simply because he may have changed his mind."

This looked so reasonable from every standpoint that I had nothing to say in reply, and walked out, victory turned into the ashes of defeat.

Back in my room I caught sight of a snapshot of Logan in a little photo rack, and recalled our last conversation.

"Whenever you have a real interesting point of law," he had said, "where you have absolute flawless justice on your side, come to me with it, for such cases are all too few to keep me from getting rusty."

I took the midnight train, and the next afternoon I walked into Logan's office.

"I've come with that interesting point of law for you," I announced.

"Doubly delighted," he declared as he

waved me towards a chair and set out a box of cigars.

"It looks as if he had you," Logan announced when I had finished my story, "but I will look the matter up and let you know this afternoon."

I put in the time as best I could, and on the hour named I was back in the office.

"Well, what have you decided?" I asked eagerly.

"I have decided," replied Earle, "that we had better send a written notice to Mr. Harmon, demanding that he publish your manuscript, then, if he refuses, we will enter suit for its return."

"What you say goes," I assured him warmly.

Harmon returned the expected and contemptuous refusal to this demand, and the delighted Logan at once entered suit for the return of the manuscript, offering to return the purchase price. He had been mortally afraid, he told me, that Harmon would accede to our request.

"Nothing would suit me better," I demurred.

"And deprive me of the fun of winning the case in open court," said Earle reproachfully.

A month later the case came to trial, and no criminal fighting for his life was ever more anxious than I.

We went into the attorney's room, Earle adjusted his gown, and we went out and took our seats on the right of the long table. Harmon and his counsel, Joe Powell with the smooth face and the prominent upper teeth, were already seated on the opposite side.

Our side of the case was soon concluded, and Powell arose with a studied sneer on his face.

"This case is too simple to admit of argument," he began. "Mr. Harmon purchased and paid for the manuscript in question, and it became his property the same as any ordinary article of merchandise, and can be dealt with by him in any manner he chooses, without interference by the plaintiff. It would be just as reasonable to contend that if the plaintiff sold Harmon a trotting horse, Harmon was bound to race the horse on all the race tracks in the country, as to argue that if the article sold happened to be a book manuscript Harmon was legally bound to publish it."

My heart sank. Surely the argument was sound.

"My learned friend's logic is good," replied Logan, with an easy assurance that revived my sinking spirits, "but unfortunately for him the analogy does not hold and the authorities are against him."

"There is not a single case on the point decided by any court of last resort in the United States," interjected Harmon's attorney, confidently, again shattering my rising hopes.

"That is true," admitted Logan tolerantly; but the United States is not the only country on the map, and there are many cases decided in other English speaking jurisdictions which are regarded with great respect where our own courts have not passed upon the point, the English and Canadian courts, for instance."

"That is true," remarked the judge, "and at least one great American publishing house is printing a series of these cases for the benefit of the United States bar." [2]

"In the case of Morang v. Le Sueur," continued Logan, "exactly the same point arose, and the supreme court of Canada decided that a sale of a manuscript differs from a sale of an ordinary chattel in that there is an implied agreement on the part of the publisher to publish the work, and on his refusal to do so the author may return or tender the purchase money and recover the manuscript."

"Would you read an extract from the judgment?" asked the judge, evidently interested in the case for the first time.

"'I cannot agree,' read Logan, 'that the sale of a manuscript of a book is subject to the same rules as the sale of any other article of commerce, *e. g.*, grain or lumber. The vender of such things loses all dominion over them when once the contract is executed, and the purchaser may deal with the thing which he has purchased as he chooses. It is his to keep, to alienate, or destroy. But it

[2] British Ruling Cases.

will not be contended that the publisher who bought the manuscript of "The Life of Gladstone" by Morley, or of "Cromwell" by the same author, might publish the manuscript, having paid the author his price, with such emendations or additions as might perchance suit his political or religious views, and give them to the world as those of one of the foremost publicists of the day. Nor could the author be denied by the publisher the right to make corrections where found to be necessary for historical accuracy; nor could the manuscript be published in the name of another. After the author has parted with his pecuniary interest in the manuscript, he retains a species of moral or personal right in the product of his brain.

" 'What I have said is sufficient to show that what is called literary property has a character and attributes of its own, and that such a contract as we are now called upon to consider must be interpreted and the rights of the parties determined with regard to the special nature of the thing which is the subject of the contract. An ancient manuscript of a papyrus might have, by reason of its antiquity and the circumstances surrounding its discovery, some intrinsic monetary value. But what may be the value to the writer or publisher of the manuscript in question here, so long as it is allowed to remain in the pigeonhole of the latter? What was the consideration of the payment? Not the paper on which the manuscript is written; its value is destroyed for all commercial purposes. Not the paper with the writing on it; that can have no value without publication. The only way in which the appellant can legitimately recoup himself for his expenditure must be by the publication of the manuscript, and in this I find additional reason for holding that the publication was an implied term of the contract.

" 'In conclusion, therefore, I hold that the conditions which together make up the consideration moving to the respondent, were the payment of the stipulated price and the publication of the work. The respondent fully performed his contract when he wrote and delivered the manuscript, and if, in the exercise of his undoubted right, the appellant properly rejected it as unsuitable for the purpose for which it was intended, then both parties were free to rescind the contract altogether, and the respondent, upon the return of so much of the consideration as he had received, was entitled to have the manuscript returned to him. It cannot be denied that by the appellant's refusal the respondent was deprived of the chief consideration which moved him to write the manuscript, that is, the benefit to his literary reputation resulting from the publication.' " "The quotation," Logan concluded, "is from the judgment of the chief justice of Canada." [3]

"Would you hand up the report of that case, Mr. Logan?" asked the judge.

He glanced over it keenly, and shut the book with an air of decision. My heart stood still. Logan was drawing an easily recognized caricature of the presiding judge and the ancient crier. Powell leaned forward a little puzzled. Win or lose, we had him guessing at any rate.

"In the absence of any decisions by our own courts," declared the judge, "I adopt the reasoning of the Canadian supreme court in the case just cited, and there will be judgment for the return of the manuscript to the plaintiff."

Harmon leaned across the table towards me, ignoring the obvious displeasure of Powell, who was, no doubt, already contemplating an expensive and tiresome appeal to a higher court.

"Come up to the house this evening," he remarked pleasantly.

"What do you suppose his game is?" I asked as we left the court.

"He sees he is licked and wants to fix up," replied Logan.

When I was ushered into the Harmon library that evening, the publisher received me with every appearance of friendliness. I could not imagine he was the same man who had treated me with such cool contempt.

"I have thought the matter over," he

[3] 45 Can. S. C. R. 95, and Ann. Cas. 1912B, 602. In England apparently the same rule has been laid down in an unreported case. The Writer (Boston), vol. 26, No. 10, p. 150.

announced with an air of great candor, "and have decided to publish your book after all."

I was determined to settle our business and family relations at the same time.

"I demanded that you do so," I remarked pleasantly, "but you refused. Now I don't care to have you do as you agreed, when I had to go to law over it. I rely on the judgment of the court entitling me to the return of the manuscript, and do not care to have it appear under your imprint. The suit has attracted considerable attention, and has been a fine advertisement for me, and already I have had some very flattering offers from the other publishing houses."

"But you must let me publish it," cried Harmon in alarm.

"Only on the condition," I declared stoutly, "that Nellie and I are married before the book comes out."

"I agree," capitulated Harmon, "I suppose," he added with a grin, "that she might do worse than marry an author who could separate me from $4,000 for his first book."[4]

M. K. Haymond

[4] Harmon beat me in a way after all. The book netted him over $15,000, and all my later manuscripts were comparative failures. But Nellie is the best wife in all the world, so I am perfectly satisfied.

Liberty Secured by Law.

But our fathers were not absurd enough to put unlimited power in the hands of the ruler and take away the protection of law from the rights of individuals. It was not thus that they meant "to secure the blessings of liberty to themselves and their posterity." They determined that not one drop of the blood which had been shed on the other side of the Atlantic during seven centuries of contest with arbitrary power should sink into the ground; but the fruits of every popular victory should be garnered up in this new government. Of all the great rights already won they threw not an atom away. They went over Magna Charta, the Petition of Right, the Bill of Rights, and the rules of the Common Law, and whatever was found there to favor individual liberty they carefully inserted in their own system, improved by clearer expression, strengthened by heavier sanctions, and extended by a more universal application. They put all those provisions into the organic law, so that neither tyranny in the executive nor party rage in the legislature could change them without destroying the government itself.—Jeremiah S. Black.

Editorial Comment

Liberty exists in proportion to wholesome restraint.—Webster.

Case and Comment
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International Arbitration

THE principle of international arbitration and the establishment of an international court, together with the machinery to make its decrees effective, and the limiting of national armaments, were indorsed by the New York State Bar Association at its recent meeting.

The report of the committee on international arbitration was presented by the members, Everett P. Wheeler, Adelbert Moot, Francis Lynde Stetson, Jeremiah Keck, and Charles Henry Butler. After reviewing recent events in the direction of international arbitration, the committee's report presented resolutions declaring in favor of "an international agreement upon mutual limitations of armaments, and the establishment of a court of arbitral justice, of which the decrees shall be enforceable by an international police." The resolutions further urged President Wilson to use the good officers of the United States to bring about such an end.

Reviewing the history of the past year, the report referred to the "increased violence" and broadening extent of the war. It also cited the formation of the League to Enforce Peace, of which William H. Taft is president. Its object is "to establish and maintain peace after the close of the present war; not to end the European conflict." The report then quoted the definite proposals put forward at the time of the formation of the League, in Philadelphia, in June, 1915; these were for the reference of all justiciable questions between signatory powers to a judicial tribunal; for the settlement by a council of conciliation of all matters not adjusted by negotiation; for the use of the armed forces of the nations against any country breaking the terms of the agreement; and for conferences between the signatory powers to formulate and codify international law. Associations of the League also have been formed in Holland, Denmark, and Switzerland.

Reference was then made in the report to the recommendations made last year. The report added:

The distinction between the definite proposals of this League and those approved by this Association in January, 1915, will be seen by comparing them with our resolution. That recommends two things:

(1) Limitation of armaments by international agreement.

(2) An international police which shall have the power to enforce the judgments of an international court at The Hague, and may be called upon by the court to

prevent the violation of treaties by any of the nations who are parties to the Congress at which the convention shall be adopted.

As we read the "definite proposals" they leave the enforcement of international rights to the action of the respective governments. Ours would require for such action the mandate of an international court and the sanction of its authority.

The chief argument against our proposal is that it would require the maintenance of too great an international army, and is, therefore, impracticable. In reply we say that our proposals are interdependent. Limitation of armaments in each country to purposes of internal security would relieve the nations from the burden of enormous military and naval forces,—a burden very heavy before the present war,—and which after it will be unbearable. With this limitation the international army could also be of moderate size.

It is also said that the United States would not be willing to maintain its quota of such an international force. We are warned against "entangling alliances." That warning was salutary a century ago. But conditions have changed. Modern science has brought the nations close together. The United States has acquired territory in the Pacific Ocean, in the Caribbean Sea, and to the north of Canada. We have joined with the other Republics of this continent in Pan-American conferences. And we have twice taken part in international conferences at The Hague and ratified conventions there adopted. It is not possible for us to maintain a policy of isolation. And we have the good faith that keeps its own agreements, and manly energy to insist that other nations shall keep theirs.

It may also be said that the court of arbitral justice recommended by the second Hague conference has not yet been organized. That is true. But the convention for the establishment of such a court has been ratified by the United States and by most of the powers who were parties to the conference. There are several reservations in various acts of ratification. But progress was made at the second Hague conference. It remains for another to complete the work there auspiciously begun.

After reviewing some of the agreements of the second Hague conference, the report adds:

The "Convention Regarding the Rights and Duties of Neutral Powers and Persons in Case of War on Land," contains the following article: "Article 1. The Territory of Neutral Powers Is Inviolable."

"This also was ratified by Germany, and by many of the powers engaged in the present war. It will thus be seen that it is not for want of wise and just agreements and mutual promises that war is flagrant. It is because these agreements and promises have had no sanction but the honor and good faith of the powers. What your Committee has tried to do is to recommend an authority and sanction which would protect the innocent against the guilty."

These grave and important questions are receiving deserved consideration. In his annual address as president of the American Society of International Law, states Mr. C. B. Strayer in Leslie's, Mr. Elihu Root said that the problem of the world at the close of the war will be to "determine whether what we call international law is to be continued as a mere code of etiquette or is to be a real body of laws imposing obligations." Mr. Root argued that if international law is to be respected in the future there must be a written code to take the place of the patchwork of agreements and treaties. The most fundamental change must be the attitude of all nations toward any violation of the law as an offense against the whole family of nations, and not merely the nation directly involved, as is now the case.

"Violations of the law of such a character as to threaten the peace and order of the community of nations must be treated by analogy to criminal law," said Mr. Root. "They must be deemed to be a violation of the right of every civilized nation to have the law maintained and a legal injury to every nation."

The American Society for the Judicial Settlement of International Disputes, with headquarters at Baltimore, has been

laboring assiduously in an effort to discover some means of providing for a national court of arbitration to which conflicts between sovereign nations can be referred for adjudication.

William R. Vance, dean of the law school of the University of Minnesota, has contributed an article which is numbered bulletin 23, and issued by the Society. He makes the novel suggestion that the Supreme Court of the United States be offered as a tribunal before which conflicts and disagreements between nations may be brought and passed upon. While the implied compliment to the Supreme Court of the United States is great, it is not undeserved, and the argument of Dean Vance is not only ingenious and plausible, but sternly logical as well. It may be fairly said that our Supreme Court, better than any other tribunal on earth, is equipped, by its peculiar organization, and qualified by long experience, to deal with these great questions. Since the institution of a Supreme Court that body has been called upon to settle disputes between sovereign states that were just as great sticklers for autonomy as any European nation. But it is improbable that the world powers would consent to submit their controversies to a tribunal that is not international in its constitution and personnel.

Important Decision in Bankruptcy.

IN THE recent case of Bailey v. Baker Ice Machine Co. (U. S. Adv. Ops. 1915, p. 50) decided on November 29, 1915, the United States Supreme Court was called upon to determine for the first time the operative force and effect of the amendment of June 25, 1910, to the national bankruptcy law, giving a trustee in bankruptcy the rights of a creditor holding a lien by legal process. The precise question arose in this way: A contract of conditional sale, required by the law of the state governing the contract to be recorded in order to be valid as against creditors, executed in November, 1911, was not recorded until May 15, 1912. At the date of the recording the purchaser was insolvent, and the seller had reasonable cause to believe that such was the fact. Bankruptcy followed within four months of May 15, 1912. It was contended on the part of the trustee in bankruptcy that he was entitled to the rights of a creditor holding a lien by legal process as of a date anterior to the recording of the contract. This contention is denied by the Supreme Court. The court holds that the right of the trustee as a creditor holding a lien attaches as of the time of the filing of the petition, and it is the condition at that time which fixes the status of the trustee.

Another question of great interest arose in this way: It was contended on the part of the trustee in bankruptcy that the filing of the contract of conditional sale operated as a preferential transfer. It was claimed by the trustee that, before the contract was filed for record, the property therein described was subject to have been levied upon for the debts of the purchaser, and that if the contract had not been recorded prior to the filing of the petition in bankruptcy the trustee in bankruptcy would have retained the property. The court, however, held that the contract itself did not operate as a preferential transfer, because under the contract nothing passed from the seller to the purchaser.

A petition for rehearing was filed, in which counsel insisted that it was not the contract so much that operated as a preferential transfer, as the delayed recording thereof at a time when, by reason of the nonrecording, a right was existing on the part of creditors to levy on the property and claim the property as against the seller.

On January 10, 1916, the petition for rehearing was denied, no opinion being filed, and hence the court has announced the doctrine that where a contract of conditional sale is delayed in recording, the recording thereof does not operate as a preferential transfer because by the contract itself nothing passed from the seller to the purchaser.

The trustee in bankruptcy was represented by Krauthoff, McClintock, & Quant, of Kansas City, Missouri. The Baker Ice Machine Company, by Messrs. Brome & Brome, of Omaha, Nebraska.

Children's Laws of 1915.

FORTY-FIVE state and territorial legislatures and the Congress of the United States in 1915 passed laws affecting children, according to the Children's Bureau, which has just completed its survey of such legislation during the current year. Special reference is made to the impressive bulk of children's laws and to the number of commissions appointed to study and prepare for future legislation.

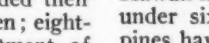
Arkansas, Florida, and Utah have commissions to report on the needs of the feebleminded; New Jersey, a commission to prepare a state program for the reorganization of public care of defectives, dependents, and delinquents; Missouri and New Hampshire, commissions on the needs of the blind; Delaware, a commission on vocational education; Idaho, a commission to report on the need for a minimum wage law; Florida and Indiana, commissions on the need for mothers' pensions; and California, a commission to study social insurance.

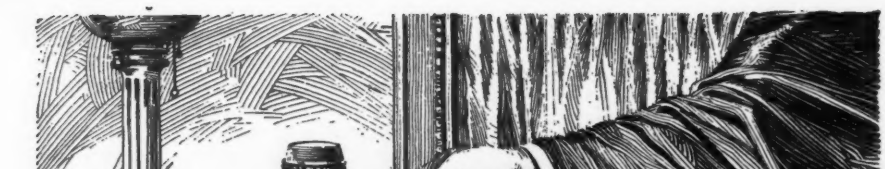
The Bureau says that the appointment of these commissions indicates a growing realization that benevolent intent cannot safely be accepted as a substitute for the careful formulation of statutes for social betterment. The subjects to which study is directed are all of immediate concern to children, and the states are thus fairly committed to a policy of selecting and harmonizing provisions which lead plainly toward the collection and codifying of all laws relating to children.

As showing the great amount of children's legislation, the Bureau says that twenty-seven states have amended their provisions for dependent children; eighteen have improved their treatment of juvenile delinquents; sixteen have strengthened their child-labor law; fourteen have concerned themselves with the needs of the mentally defective or feebleminded; three states and the District of Columbia were added to those specifically permitting the use of public-school buildings as social centers, and nine amended, or for the first time passed, a playground law; and four states passed a model vital statistics law in which the Children's Bureau is interested because it considers complete birth registration of fundamental importance to child-welfare work.

A few of the forty-five states made notable advances. Alabama, for example, whose legislature meets only once in four years, enacted a new child-labor law, a compulsory school-attendance law, an excellent desertion and nonsupport law, and a state-wide juvenile court law. Florida remodeled its treatment of juvenile delinquents, recognized the principle of compulsory school attendance, passed the model vital statistics law, and appointed two of the state commissions already referred to. Kansas established an industrial commission to regulate hours, wages, and conditions of work for women and minors, and a division of child hygiene in the state board of health; it also enacted a playground law and a mothers' pension law. New Jersey and Wyoming passed comprehensive acts relating to the care of dependent children and Pennsylvania, carefully drafted laws relating to child labor and vocational education.

The Children's Bureau has included in its review the outlying territories of the United States, and reports that Alaska has forbidden the employment of boys under sixteen underground in mines; Hawaii has passed a curfew law for girls under sixteen in Honolulu; the Philippines have provided for dental clinics in the schools and created a public welfare board to establish and maintain social centers; and Porto Rico has passed a modern juvenile court law.





Among the New Decisions

An upright judge has more regard to justice than to men.—Proverb.

Apportionment — interurban railway using street car tracks — car mileage basis. That the value of tracks in a city used jointly by an interurban railway company and a street car company, and tracks used jointly by three companies, should be apportioned upon a car mileage basis in accordance with the actual use that each company makes of the tracks and not equally between the companies, in fixing the rates for the use by the interurban company, which owns none of the tracks, is held in the Illinois case of Joliet & Eastern Traction Co. v. Chicago Heights Street R. Co. P.U.R.1915F, 110.

Bills and notes — pledge of collateral — right of indorsee. An indorsee of a note for the security of which collateral is pledged is held entitled in Oleon v. Rosenbloom, 247 Pa. 250, 93 Atl. 473, L.R.A.1915F, 968, to the benefit of a provision in the note that the collateral is security for the payment of this or any other liability or liabilities to the holder hereof now due or to become due, so that he can apply the collateral to other claims held by him against the maker.

Carriers — mileage books — condition — forfeiture. The presentation of a mileage book or mileage exchange ticket by the original purchaser for the transportation of another person who is accompanying him on the journey is held in Southern R. Co. v. Campbell, 239 U. S. 99, 60 L. ed. —, 36 Sup. Ct. Rep. 33, not to justify a forfeiture of the mileage book under a tariff rule which provides for such forfeiture if a mileage book or ticket "be presented to an agent or conductor by any other than the original purchaser."

Constitutional law — due process of law — equal protection of the laws — forbidding brickyards in designated area. A municipal ordinance, enacted in good faith as a police measure, prohibiting brickmaking within a designated area, is held in Hadacheck v. Sebastian, U. S. Adv. Ops. 1916, p. 143, 60 L. ed. —, 36 Sup. Ct. Rep. 143, not to take without due process of law, the property of an owner of a tract of land within the prohibited district, although such land contains valuable deposits of clay suitable for brickmaking which cannot profitably be removed and manufactured into brick elsewhere, and is far more valuable for brickmaking than for any other purpose, and had been acquired by him before it was annexed to the municipality, and had long been used by him as a brickyard. Nor can such ordinance be said to deny the equal protection of the laws to the owner of a brickyard within the prohibited district, where the record does not show that brickyards in other localities within the

municipality where the same conditions exist are not regulated or prohibited, or that other objectionable businesses are permitted within the same district.

Constitutional law — full faith and credit — foreign statutes. That a statute forbidding the maintenance within the state of actions brought on injury statutes of other states does not contravene a provision of the Federal Constitution requiring each state to give full faith and credit to the public acts, records, and judicial proceedings of every other state, is held in Dougherty v. American McKenna Process Co. 255 Ill. 369, 99 N. E. 619, L.R.A.1915F, 955, which seems to be the first case to pass upon the question.

Constitutional law — imprisonment for debt — failure to support wife. That failure to meet one's obligation to support his wife is not a debt within the meaning of a Constitutional provision forbidding imprisonment for debt, is held in the South Carolina case of State v. English, 85 S. E. 721, L.R.A.1915F, 977.

Corporation — insurance of president's life — ultra vires act. Insurance by a corporation for its own benefit of the life of its president and general manager, to protect itself from loss in case of his death, is held not *ultra vires* nor contrary to public policy in Mutual L. Ins. Co. v. Board, A. & Co. 115 Va. 836, 80 S. E. 565, accompanied by supplemental annotation in L.R.A.1915F, 979.

Depreciation — allowance for past depreciation where plant is in good condition. That no allowance will be made for past depreciation in valuing a water plant for rate-making purposes where it appears that it is in first-class operating condition, without any actual or tangible signs of depreciation, was held in the Idaho case of Sandpoint v. Sandpoint Water & Light Co. P.U.R. 1915F, 445.

Depreciation — method of computing — straight-line method. In valuing the property of a gas utility for rate-making purposes, the straight line method of estimating the depreciation was held by the Illinois Commission in Belleville v. St. Clair County Gas & Electric Co. P.U.R.1915F, 235, to be preferable to the sinking fund method, since, in general, it reflects most closely the practical conditions under which utility properties are usually managed.

Discrimination — rates — telephones — free service to city. The New Jersey Public Utilities Commission refused to approve an ordinance authorizing a telephone company to use the streets of a city, where the utility had agreed in consideration of the enactment of the ordinance to furnish free service to the city from telephones installed for its use, in Re Delaware & A. Teleg. & Teleph. Co. P.U.R.1915F, 358.

Discrimination — rates — street railways — public service. That a contract of a street railway company to rent special cars at a specified rate to be operated over its road by a scenic railroad for sight-seeing purposes is not a private contract, but provides for a public service, is held in the Colorado case of Castle Rock Mountain R. & Park Co. v. Denver Tramway Co. P.U.R. 1915F, 224, so that the Commission may regulate the rate to prevent discrimination against another scenic railway making a similar use of its cars.

Exemptions — merchant. That a retail meat dealer is a "vendor or merchant" and not engaged in a "trade" or "profession" within the exemption laws, is held in the Oklahoma case of Edgin v. Bell-Wayland Co. 149 Pac. 1145, annotated in L.R.A.1915F, 916.

False personation — nonexisting office or employment. A false representation as to some office or employment which has no legal or actual existence, as well as a false personation of a particular Federal officer or employee, or false pretence of holding an office or employment that actually exists in the Federal government, is held in United States v. Barrow, 239 U. S. 74, 60 L. ed. —, 36 Sup. Ct. Rep. 19, to be comprehended by the provisions of the Federal Criminal

Code, § 32, for the punishment of one who, with intent to defraud, falsely assumes or pretends to be an officer or employee acting under the authority of the United States, or any department or any officer of the government thereof, and takes upon himself to act as such, or who, in such pretended character, demands or obtains anything of value from any person or from the United States or any department or officer of the government.

Garbage — removal — exclusive contract. Under a statute giving it power to make regulations to secure the general health, to prevent and remove nuisances, and to compel and regulate the removal of "garbage" and filth beyond the corporate limits, a city may, it is held in O'Neal v. Harrison, 96 Kan. 339, 150 Pac. 551, L.R.A.1915F, 1069, grant an exclusive right to the highest bidder to remove all garbage; the term being defined in the ordinance authorizing the action, to mean, "all rejected food, offal."

Highway — barriers along embankment — strength required. That a county is not bound to maintain along a declivity beside the highway, a barrier sufficiently strong to stop an automobile driven against it when going 25 miles an hour, and prevent the car from going over the embankment, is held in Wasser v. Northampton, 249 Pa. 25, 94 Atl. 444, accompanied by recent cases in L.R.A. 1915F, 973, the earlier authorities having been gathered in a note in 42 L.R.A. (N.S.) 267.

Lottery — gifts for advertising purposes. A scheme by which articles are contracted for at a uniform price to be paid in instalments with the possibility of receiving the articles before the instalments are all paid, and having the contract canceled for advertising purposes, and of losing all right to this privilege by default in payments, is held in the North Carolina case of State v. Lipkin, 84 S. E. 340, L.R.A.1915F, 1018, to be within a statute making the conducting of a lottery unlawful.

Master and servant — death by lightning — workmen's compensation act. Death by lightning of a section hand on a railroad, while in a barn to which he had resorted while in the ordinary performance of his duty, by direction of his foreman, for refuge from a storm, is held not to arise out of and in the course of his employment, within the meaning of a workmen's compensation act, in the Michigan case of Klawinski v. Lake Shore & M. S. R. Co. 152 N. W. 213, annotated in L.R.A.1916A, 342.

Master and servant — death from heart disease — course of employment. The death from heart disease of a cook upon a lighter, where he is required to live, due to exertions in saving his personal effects when the vessel begins to sink is held in Re Brightman, 220 Mass. 17, 107 N. E. 527, annotated in L.R.A. 1916A, 321, to arise out of and in the course of his employment within the operation of the workmen's compensation act.

Master and servant — employers' liability act — descent from roof by rope — wilful misconduct. A carpenter who is injured by attempting to descend from the roof of a building on which he is working by means of a loose rope, one end of which is held in the hands of a fellow workman, instead of by the ladder provided for such purpose, is held within the protection of the employers' liability act providing for compensation to an employee who receives injuries arising out of and in the course of his employment, and not within the exception of injuries received by his intentional and wilful misconduct, in Clem v. Chalmers Motor Co. 178 Mich. 340, 144 N. W. 848, annotated in L.R.A. 1916A, 352.

Master and servant — injury arising out of employment — fall on street. An injury due to a fall on a slippery street by one employed to supervise his employer's plants, which required him to travel about from place to place, when he is going from the sidewalk onto the street to board a street car to return to his home after a tour of inspection, is held not to arise out of his employment

within the meaning of those words in a workmen's compensation act, in the Michigan case of Hopkins v. Michigan Sugar Co. 150 N. W. 325, annotated in L.R.A. 1916A, 310.

Master and servant — negligence in attempting work. An employee is held not negligent as matter of law in Boody v. K. & C. Mfg. Co. 77 N. H. 208, 90 Atl. 860, annotated in L.R.A.1916A, 10, in going onto a wet and slippery walk to clear the *débris* from the rack protecting the flume leading water from the dam to the mill in which he is employed, where the work was necessary, and all fair-minded men would not agree that the risk of injury was so apparent that the ordinary man would not have encountered it.

Master and servant — toilet facilities — crossing street — injury — course of employment. Where the employer failed to provide proper toilet facilities for employees in the building where they were at work, so that they were obliged to, and did, habitually resort for such facilities during the working hours to another building of the employer which lay across a public street, and which custom persisted for a considerable time, and, as the court was entitled to find, was therefore known and assented to by the employer, it is held in Zabriskie v. Erie R. Co. 86 N. J. L. 266, 92 Atl. 385, annotated in L.R.A.1916A, 315, that where the deceased, while crossing the street in working hours to reach the toilet in question, was struck by a passing vehicle, sustaining injuries which caused his death, the trial court was justified in finding that he came to his death by an accident which arose out of and in the course of his employment.

Master and servant — voluntary aid — effect. The common rule in the law of negligence that the wrongdoer cannot mitigate his liability by taking advantage of relief furnished by one's wife, family, friends, or otherwise, is held in Milwaukee v. Miller, 154 Wis. 652, 144 N. W. 188, annotated in L.R.A. 1916A, 1, to have no application to cases under the workmen's compensation act. That eliminates all penalizing features and limits compensation to the injured person, aside from indemnity disability, to expenses or liabilities actually incurred.

Master and servant — workmen's compensation — death by lightning. A driver for an ice company was required to follow a fixed route in substantial disregard of weather conditions, though permitted to seek shelter in times of necessity. When a severe rain storm, accompanied by lightning, was in progress, he left his team and went to a tall tree just within the lot line, either for protection or in the performance of his duties soliciting orders. Lightning struck the tree, and the same bolt struck him, and he was killed. It is held in State ex rel. People's Coal & Ice Co. v. District Ct. 129 Minn. 502, 153 N. W. 119, annotated in L.R.A.1916A, 344, that the evidence sustains a finding that the death of the decedent was the result of an accident "arising out of" his employment, within the meaning of the workmen's compensation act.

Master and servant — workmen's compensation — expenses of nurse. Expense for service of a nurse, as such, is held not allowable against the employer in Milwaukee v. Miller, 154 Wis. 652, 144 N. W. 188, annotated in L.R.A. 1916A, 1, for the period of ninety days after the injury, or at all during such period, except as a part of reasonably necessary medical and surgical treatment proved to be such by the physician and surgeon in attendance. Nor is expense for services of a nurse, as such, after the first ninety days, chargeable to the employer, nor at all thereafter except by allowance of the maximum percentage of disability indemnity.

Master and servant — workmen's compensation — injury on way to work. An injury by a workman in the course of his travel to his place of work, and not on the premises of the employer, is held in the West Virginia case of De Constantin v. Public Service Commission, 83 S. E. 88, annotated in L.R.A.

1916A, 329, not to give right to participation in such fund, unless the place of injury was brought within the scope of employment by an express or implied requirement in the contract of employment of its use by the servant in going to and returning from his work.

Master and servant — workmen's compensation — right of employer to select physician. The right of the employer under the workmen's compensation act to furnish reasonably necessary medical and surgical treatment, and the provision creating liability to the employee for reasonable expense incurred by him, or in his behalf, in that regard, in case of the former unreasonably neglecting or refusing to make the proper provision, is held in Milwaukee v. Miller, 154 Wis. 652, 144 N. W. 188, annotated in L.R.A.1916A, 1, by necessary implication to reserve to the employer, under ordinary circumstances, reasonable opportunity to exercise the privilege, and renders competency of the employee to obtain such treatment, or for the same to be obtained in his behalf, at the expense of the employer, contingent upon such opportunity having been accorded.

Master and servant — workmen's compensation — rupture. A rupture caused by a strain while at work is an accident or untoward event arising in the course of employment, and is held compensable under the workmen's compensation act in the West Virginia case of Poccardi v. Public Service Commission, 84 S. E. 242, annotated in L.R.A. 1916A, 299.

Master and servant — workmen's compensation — work on milldams. Cleaning *débris* from the rack protecting the flume leading from a milldam is held in Boody v. K. & C. Mfg. Co. 77 N. H. 208, 90 Atl. 860, annotated in L.R.A.1916A, 10, to be within the operation of an act providing compensation for one injured by work in any shop, mill, factory or other place in connection with any machinery propelled by steam or other mechanical power.

Master and servant — workmen's compensation act — aggravation of injury. The aggravation by a boxing match of a wound received in the course of employment which had practically healed, and would have caused no further trouble had it been given a little more rest, so that blood poisoning and permanent injury to a hand result, is held the proximate cause of such injury, in Kill v. Industrial Commission, 160 Wis. 549, 152 N. W. 148, annotated in L.R.A. 1916A, 14, and no recovery can be had under a workmen's compensation act providing compensation for injuries received in the course of employment.

Master and servant — workmen's compensation act — assault by fellow servant. Injury to an employee while he is performing the duties assigned to him, by assault by a fellow servant who is permitted to continue his service while intoxicated, in which condition he is, to the knowledge of the employer, quarrelsome and dangerous, is held to arise "out of and in the course of" the employment, within the meaning of a workman's compensation act, in Re McNicol, 215 Mass. 497, 102 N. E. 697, annotated in L.R.A.1916A, 306.

Master and servant — workmen's compensation act — blood poisoning. Blood poisoning from an abrasion of the skin received by an employee in the course of his employment is held a proximate result of the injury, so as to come within the operation of the workmen's compensation act, in the California case of Great Western P. Co. v. Pillsbury, 151 Pac. 1136, annotated in L.R.A. 1916A, 281.

Master and servant — workmen's compensation act — collision with fellow employee. An injury to an employee by collision with another employee, hidden from view by obstructions, in running to register on a time clock, which he was required to do before leaving the building when the quitting signal was given, is held to arise out of and in the course of his employment within the meaning of the workmen's compensation act, in Rayner v. Sligh Furniture Co. 180 Mich. 168, 146 N. W. 665, annotated in L.R.A.1916A, 22.

Master and servant — workmen's compensation act — death by lightning — liability. Death by lightning while an employee is upon a dam, performing the duties of his employment, is held in Hoenig v. Industrial Commission, 159 Wis. 646, 150 N. W. 996, annotated in L.R.A.1916A, 339, not to be within a statute providing compensation in case of death from injury proximately caused by accident while the employee was performing services growing out of and incident to his employment, where the Industrial Commission has found upon substantial evidence that there was no hazard incident to or growing out of the employment substantially different from that of ordinary out-of-door work during a thunderstorm.

Master and servant — workmen's compensation act — hernia. Hernia resulting from a workman's attempting to move a heavy truck in the line of his employment is held within the operation of a workmen's compensation act providing compensation for injury resulting from any fortuitous event as distinguished from disease, in Zappala v. Industrial Ins. Commission, 82 Wash. 314, 144 Pac. 54, annotated in L.R.A. 1916A, 295.

Master and servant — workmen's compensation act — injury by bullet. Injury inflicted upon the superintendent of a mill, whose duty is to order trespassers from the premises, by a shot fired by a trespasser to whom he gives such order is held in the Massachusetts case of Re Reithel, 109 N. E. 951, annotated in L.R.A.1916A, 304, to arise out of and in the course of his employment within the operation of a workmen's compensation act; at least, where he has received special instructions from a superior to order out the trespasser in question and call the police to his assistance.

Master and servant — workmen's compensation act — injury due to intoxication — liability. That injury to an employee was proximately caused by his voluntary intoxication is held not to relieve the employer from liability therefor under a statute making him liable for injury proximately caused by accident, and not by wilful misconduct, in Nekoosa-Edwards Paper Co. v. Industrial Commission, 154 Wis. 105, 141 N. W. 1013, annotated in L.R.A.1916A, 348.

Master and servant — workmen's compensation act — injury due to lapse of memory. Pneumonia contracted by an employee who, because of prior injuries, suffers a lapse of memory while in charge of his master's team, and, in attempting to get the horses to the stable, loses his way, wanders from the wagon into a swamp, and suffers exposure during the night, is held not an injury "arising out of" his employment, within the meaning of a workmen's compensation act, Milliken v. Travelers' Ins. Co. 216 Mass. 293, 103 N. E. 898, annotated in L.R.A.1916A, 337.

Master and servant — workmen's compensation act — drowning — injury in course of employment. The accidental drowning of an employee, or his fall onto the rocks in the river bed, while engaged in the duty of clearing *débris* from the rack protecting the flume which carries the water from the dam to the mill in which he is employed, is held within the operation of a statute providing compensation for injuries by accident arising out of or in the course of the employment, in Boody v. K. C. Mfg. Co. 77 N. H. 208, 90 Atl. 860, annotated in L.R.A.1916A, 10.

Master and servant — workmen's compensation act — injury not arising out of employment. An injury to an engineer employed to run the engine and dynamo in the basement of a printing plant, while he is attempting to operate the elevator for the accommodation of employees of the plant on the upper floors of the building, without the knowledge or request of his employer, and at a time when he did not need such service, is held not to arise out of or in the course of his employment, within the meaning of the workmen's compensation act, in the Michigan case of Spooner v. Detroit Saturday Night Co. 153 N. W. 657, annotated in L.R.A.1916A, 17.

Master and servant — workmen's compensation act — injury while leaving premises for luncheon. An injury to one employed by the week, upon stairs which are not under the employer's control, but afford the only means of going to and from the workroom, while leaving the premises for the purpose of procuring a luncheon, is held in Re Sundine, 218 Mass. 1, 105 N. E. 432, annotated in L.R.A.1916A, 318, to arise out of and in the course of his employment, within the meaning of the workmen's compensation act.

Master and servant — workmen's compensation act — injury while proceeding to place of employment. An injury to a city employee who, after reporting according to custom for instruction as to where he is to work during the day, falls on the sidewalk while on his way toward such place, is held in Milwaukee v. Althoff, 156 Wis. 68, 145 N. W. 238, annotated in L.R.A.1916A, 327, to grow out of and is incidental to his employment within the meaning of a workmen's compensation act, although it occurs before the hours when his regular duties for the day begin.

Master and servant — workmen's compensation act — liability for typhoid fever. Typhoid fever contracted by an employee through the negligent contamination of drinking water furnished by the employer is held within an act providing compensation for injury accidentally sustained by an employee while performing service growing out of and incidental to his employment, in the Wisconsin case of Vennen v. New Dells Lumber Co. 154 N. W. 640, annotated in L.R.A.1916A, 273.

Master and servant — workmen's compensation act — loss of eye through infection. Loss of an eye through infection carried to it by the fingers when attempting to allay irritation caused by steel splinters which lodged in it from a machine on which an employee was working is held not an injury arising out of or in the course of the employment, within the meaning of the workmen's compensation act, in McCoy v. Michigan Screw Co. 180 Mich. 454, 147 N. W. 572, annotated in L.R.A.1916A, 323.

Master and servant — workmen's compensation act — occupational disease. A statute providing compensation in case an employee receives a personal injury arising out of and in the course of his employment is held in Adams v. Acme White Lead & Color Works, 182 Mich. 157, 148 N. W. 485, annotated in L.R.A.1916A, 283, not to include an occupational disease such as lead poisoning, where the title purports to provide compensation for accidental injuries.

Master and servant — workmen's compensation act — suicide — irresistible impulse. Compensation is held recoverable under the workmen's compensation act in Re Standard Acci. Ins. Co. 220 Mass. 526, 108 N. E. 466, annotated in L.R.A.1916A, 333, for death of a workman by throwing himself from a window, as the result of injuries arising out of and in the course of his employment, which deranged his mind so as to create an irresistible impulse to commit the act which caused death.

Master and servant — workmen's compensation act — total disability — earning capacity in other calling. One who, by the loss of a thumb and finger on one hand, is disabled from following the particular calling in which he was engaged, is held entitled in Mellen Lumber Co. v. Industrial Commission, 154 Wis. 114, 142 N. W. 187, annotated in L.R.A.1916A, 374, to compensation for total disability regardless of what he may be able to earn in other occupations, under a statute providing that the weekly loss of wages on which the compensation of an injured employee shall be computed shall consist of such percentage of the average weekly earnings of the injured employee as shall fairly represent the proportionate extent of the impairment of his earning capacity "in the employment in which he was working at the time of the accident."

Master and servant — workmen's compensation act — waiter at banquet. A waiter employed by a caterer to serve

at a particular banquet for a specified price and transportation, with freedom to go where he will when the service is finished, is held in Gaynor v. Standard Acci. Ins. Co. 217 Mass. 86, 104 N. E. 339, annotated in L.R.A.1916A, 363, not to be within the protection of a workmen's compensation act which provides that employees shall include every person in the service of another under any contract of hire, except one whose employment is but casual, or is not in the usual course of the trade, business, profession, or occupation of the employer.

Monopoly and competition — motor bus routes — pleasant mode of travel. That it may be more pleasant to travel in a motor bus than in a street car, or *vice versa*, will at least be given some weight in passing upon an application for a certificate of convenience and necessity for the operation of a motor bus system in a city in which the street cars are operated, is held in the New York case of the Petition of Gray, P.U.R.1916A, 33.

Municipal corporations — tunnel beneath highway — power to permit. A municipal corporation, it is held in People ex rel. Mather v. Marshall Field & Co. 266 Ill. 609, 107 N. E. 864, annotated in L.R.A.1915F, 937, may permit one conducting business in stores on opposite sides of a street to construct tunnels beneath the surface of the street to enable employees and patrons to pass from store to store, if it can be done without interfering with the public uses of the street, and the tunnel is to be removed in case of future interference, even though the fee is in the municipality.

Payment — telephone service — prepayment. That a telephone company is entitled to require payments in advance for service for a reasonable period is held in the Wisconsin case of Re Richland Teleph. Co. P.U.R.1915F, 12.

Payment — enforcement — sewer service to two tenants through a single lateral. A rule of a sewer company that two tenants will not be served through a single lateral is held reasonable in the Nevada case of Public Service Commission v. Tonopah Sewer & Drainage Co. P.U.R.1915F, 95, where the owner of the property will not guarantee payment, since service cannot be shut off from a delinquent tenant without denying it to the paying tenant.

Railroads — contract — form of contract. That a contract for the building of a railroad should provide for construction at a cost not to exceed a specified amount, or for construction at a cost to the contractor plus a proper allowance for contractor's profit, rather than for stated prices for various portions of the work with an extra percentage of profit for the contractor, was held in the California case of Re California Southern R. Co. P.U.R.1915F, 311.

School — employment of teacher. A public body, such as a school board, consisting of several persons, authorized to perform acts of a public nature, and to which public duties are intrusted, such as the employment of teachers for the public schols, should, it is held in the Oklahoma case of Ryan v. Humphries, 150 Pac. 1106, annotated in L.R.A.1915F, 1047, perform such duties as a board, and to do so it is imperative that all should meet together, or at least be notified of such meeting, and have an opportunity to meet together to consult over the employment of such teachers, before a valid contract can be entered into by them binding the district.

Service — electricity — extensions — conditions. That an electric light company may be required to extend service to a new consumer without requiring him to bear any of the cost of extension or guarantee a minimum consumption is held in the Pennsylvania case of Sisk v. Abington Electric Co. P.U.R. 1915F, 835, where he is located in the central builtup portion of the town and the extension can be made without any great outlay, although it may not immediately be remunerative.

Service — railroads — discontinuance of passenger service. That the

Commission has no power to permit a railroad to discontinue passenger service which is provided for in its charter and which was one of the purposes for which it was incorporated is held in the New York case of Re Agor, P.U.R. 1915F, 638.

Service — telephones — cancelation — charge for. The exaction of a charge of $5 for permitting a cancelation of a yearly contract for telephone service prior to its expiration was held to be unreasonable as greatly exceeding the resultant damage in the Oregon case of Re Pacific Teleph. & Teleg. Co. P.U.R. 1915F, 296.

Taxes — foreign life insurance company — doing business. The mere continuance of the obligation of existing policies in a foreign life insurance company, held by resident policy holders, together with the receipt of the renewal premiums upon these policies at the company's home office, may not be treated by the state, it is held in Provident Sav. Life Assur. Soc. v. Kentucky, 239 U. S. 103, 60 L. ed. —, 36 Sup. Ct. Rep. 34, as constituting in itself the transaction of a local business, justifying the imposition under Ky. Stat. 1906, § 4226, of an annual privilege tax upon the amount of the premiums so received.

Valuation — theories — cost of reproduction less depreciation — exact cost of duplication. In ascertaining the value of a water plant for rate-making purposes the worth of a new plant of equal capacity, efficiency, and durability with proper discount for defects in the old and the accrued depreciation is held in the Idaho case of Murray v. Public Utilities Commission, 150 Pac. 47, P.U.R.1915F, 436, to be the proper measure of value, rather than the cost of exact duplication.

Water — obstruction by municipal bridge — rule forbidding vessel to approach — liability for collision. A municipal corporation cannot, it is held in Chicago v. Chicago Transp. Co. 222 Fed. 238, annotated in L.R.A.1915F, 1063, in view of the Federal legislation regarding bridges over navigable rivers, escape liability for injury to a vessel by collision with its drawbridge over a navigable water of the United States, because of absence of the tender from his post of duty, by the adoption of an ordinance forbidding vessels to approach its bridges until the red danger signal is removed.

Recent English and Canadian Decisions

[Note.—The more important of these decisions will be reported, with full annotations, in British Ruling Cases.]

Adjoining landowners — removal of sand from beach — washing away of beach adjoining — liability. Although, says Middleton, J., in Cleland v. Berberick, 34 Ont. L. Rep. 636, 25 D. L. R. 583, no cases were cited to him dealing with the precise point, and he had found none, in his opinion the principle *sic utere tuo ut alienum non laedas* imposes a legal liability upon one who, by the removal of sand from the portion of a beach owned by him, has facilitated the washing away of a large portion of the beach of an adjoining owner.

Contract — agreement by newspaper to suppress comment — validity. An agreement on the part of the proprietors of a newspaper who have undertaken in their paper to advise their public on certain land and financial schemes, that they will not publish any comment upon a certain company, its directors, business, or land, is invalid as in restraint of trade and as being against public policy. Neville v. Dominion of Canada News Co. [1915] 3 K. B. 556.

Gaming — automatic vending machine — trade checks with purchases. The appellate divisions of the Supreme courts of Alberta and Ontario are in conflict upon the question whether an automatic gum vending machine is a

"means or contrivance for unlawful gaming" so as to render one who maintains such a machine on his premises liable to conviction for keeping a common gaming house, where such machine in addition to a package of gum delivers, in some cases, one or more metal tokens redeemable in goods at the store where the machine is kept, or which may, at the customer's option, be replaced in the machine instead of a coin with like results except that no gum will be received, notwithstanding the fact that the number of tokens, if any, at the next operation of the machine is, by a dial on the machine, indicated in advance to the person using it. The Alberta Supreme court in Rex v. Stubbs, 24 Can. Crim. Cas. 303, 25 D. L. R. 424, expresses the opinion that the fact that the inducement is held out that in some future game the operator may receive something more than an adequate return for his money does not introduce the element of chance into any game which may be played upon the machine. With this conclusion the Ontario court, in Rex v. O'Meara, 35 Can. Crim. Cas. 16, 25 D. L. R. 503, disagrees, considering that it overlooks the fact that there is not the element of certainty except as to the minimum to be received, and that there is no certainty as to the maximum.

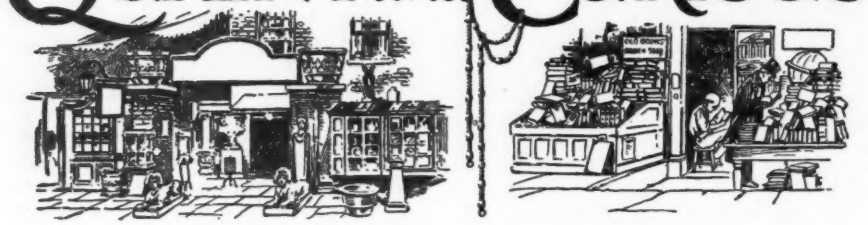
Landlord and tenant — implied obligation of tenant of farm land. Although a tenant of farm land is under an implied obligation to cultivate the land in a good and husbandlike manner according to the custom of the country, such obligation does not necessarily extend so far as to require him to deliver up the land at the termination of the tenancy in a clean and proper condition, properly tilled and manured. If he finds it in worse than proper condition, his duty is not discharged by leaving it in the same condition as when he took it nor on the other hand, if he finds the land in better than proper condition is he bound to leave it as he found it, so long as he farms it in a proper and husbandlike manner. Williams v. Lewis [1915] 3 K. B. 493.

Nuisance — overcrowding cars — criminal liability of street railway company. A street railway company which systematically and deliberately permits its cars to be overcrowded at certain hours of the day may properly be convicted of having committed a public nuisance, although such overcrowding does not affect all of the public but those only who had become passengers in defendant's cars. Rex v. Toronto R. Co. 34 Ont. L. Rep. 589, 25 D. L. R. 586.

Partnership — syndicate formed to purchase land at fixed price — liability of member to account for profits made upon exercise of option. That the principle that one who stands in a relation of trust or confidence to another must account for any secret profit made out of a transaction for their joint benefit does not apply in a case where a member of a syndicate formed to purchase certain property at a stated price has made a profit out of the exercise of an option held by him to purchase the property in question at a less price, there being in such case no obligation upon him to exercise the option for the benefit of the syndicate or to obtain the land at a lower price than that agreed upon in forming the syndicate,—is held in Merriam v. Kenerdine Realty Co. 34 Ont. L. Rep. 556, 25 D. L. R. 369.

Wills — validity of gift to Secular Society — public policy. A company known as the Secular Society Ltd. whose principal object, as stated in its memorandum of association, is to promote "the principle that human conduct should be based upon natural knowledge and not upon supernatural belief, and that human welfare in this world is the proper end of all thought and action," is not such an illegal organization, notwithstanding the atheistic character of its teachings, that the courts will not aid it in recovering a legacy given to it. Re Bowman [1915] 2 Ch. 447.

QUAINT and CURIOUS



Men are but children of a larger growth.—Dryden.

A Plea for Representative Government. The convention of a mountain county in the state of Nevada had passed a resolution to the effect that all aspirants for a nomination should address the convention in a speech not exceeding five minutes in length. A candidate for Member of Assembly, who was well-beloved of "the boys," had during the day yielded to the hilariousness of the occasion, and one of his friends therefore moved that he be excused from speaking. But the supporters of his opponent, thinking to gain a point for their candidate, opposed the motion, and insisted upon compliance with the rule. Thereupon the bibulous one, accoutered as he was, and without removing his cowboy hat, staggered to the platform, and supported himself against the President's chair:

"Gentlemen of the Convention," said he, "I am, as you may observe, drunk. I am exceedingly drunk. I owe this disgraceful plight to the superior carrying capacity of my honorable opponent. He has with me looked upon the wine when it was red, or rather upon the whisky when it was yellow. But being accustomed to the copious use of alcoholic stimulants he is tolerably sober, while I am, alas, intolerably inebriated. But what of that? Ours, through the efforts of the fathers of the revolution, is a representative government. What is the situation in this convention? The politicians have dictated the nomination for sheriff. The bank has decreed who shall be treasurer. The lawyers have the district attorney and the county judge, and the school teachers have successfully whooped it up for the superintendent of public instruction. Shall the great body of the people lack representation in the legislative halls? Gentlemen, prepare your ballots. Look at me, and remember that the drunken element of this county demands representation upon this ticket."

He was nominated.

Judge Was Close at Hand. Up at the courthouse they are telling this story on former United States Senator Charley Fulton:

There is a judge on the circuit bench who hears testimony and listens to arguments after any manner he chooses. Sometimes he does a marathon around the court room; at other times he takes a flier out into the corridor; and again he goes into his chambers.

Barrister Fulton wasn't onto all these curves, and he was trying an important case before the wandering judge. There was a most interesting point of law involved, and the Senator came up well prepared to drive his argument home. The books were piled on a table in front of him.

The jurists had been sitting on the bench at the outset, and the attorney had reached the point where he wished to make the court realize the import of the matter by reading from United States Supreme Court decisions. He leaned over the table and hurried through the tome to where he wished to read.

Looking up, Fulton discovered the seat on the bench was vacant. The lawyer gazed into space for a second, then asked right out loud:

"Where's that damn fool gone now?"

And then he looked around and there was the judge directly behind him, peering into the law book from which Charles W. Fulton wished to read.

A Marriage Contract. Recognition of common-law marriages in Wisconsin has dealt the formality of olden days a terrific body punch. The King's English is also assimilating severe punishment as attested by the following marriage contract, filled out by a justice of the peace:

Marriage contract in-triplacet

Mr. . . . of the city of Madison, Dane Co., Wis., and . . . of the city of Madison, Dane Co., Wis., being of age as follows, . . . of the age of 22 years of age and . . . of the age of 22 years of age and boath the residents of the state of Wisconsin, and you are both being free from veneral deseases and being on no manner of the same blood or kin and neither of us being an epilactic, idiot, or insane, do herebay promice and agree to become Husband and Wife, to be ever faithful and true to each other and continue the said relations of husband and wife untill death shall part us.

In witness whereofe the said parties have hereunto set their hands and seals."

Loan Wanted. A bank recently received the following alluring application for a loan:

"Banca.—

II. 2, 1916.

"P.—

"I reada de pape howa you do lendi moneta peoples hera P—. Wella I hera P— an wanta you lenda me moneta. I Keep groseria wid A— B— in S— streeta an wanti to hima get outa. He no gooda man and bis no good to. All he do lika da ladee. Now A— he go an you lenda me dimoneta den I puta up vina bis wida groseria and we maka lota moneta. I hava now mora tre hunder scudi di stock anda woula lika you lenda me fife hunder dolla mora. After I Make A— go he loafora an a porge thena we geta likker bis anda maka lota de moneta.

"Captiano X— anda polizia knowa me wella." "Y—Z."

Seeming Irrelevancy. For unconscious humor in an index it would be hard to beat Sergeant Hawkins's "Pleas of the Crown," published in 1795. The cross references include "Cattle, see Clergy," "Chastity, see Homicide," "Convicts, see Clergy," "Elections, see Bribery," "Incapacity, see Officers," "King, see Treason," "Shop, see Burglary." All these, however, are beaten in the British Museum catalogue; there we get "Socinian Divine, see Devil." Yet there we also get "A brief history of the Unitarians . . . see Jesus Christ."—Exchange.

Animal Accusers. Many a criminal has cursed the fact that he overlooked the job belonging to some unfortunate individual he had attacked, but the Vienna police possessed a collie which was successful in unraveling several mysteries. He tracked the murderers of a boy and a servant girl, whose whereabouts were unknown, and on another occasion he discovered the body of a woman who had been missing for a week. Left in her room for three days, he was released, and then went direct to a river, plunged in, and brought her body ashore.

It was a dog, too, that brought some Spanish murderers to justice. His master was killed in a quarrel, and his body buried, but the dog succeeded in escaping from the criminals. It went to its master's house, and by barking before the eldest son, and, running to the door, succeeded in rousing his curiosity.

The son followed the dog to the newly dug grave, where it began scratching; and the body being discovered, the police were informed. After this had been done, the dog continued barking as before, and was not satisfied until it was again followed. Then, leading the way to a café, it sprang at a man who later confessed to the murder.

Some time ago extensive poaching occurred on one of the American state reservations, but the game wardens were unable to catch the delinquents. After an unsuccessful day a warden, accompanied by his dog passed along a station where a small crowd was waiting for the train.

A coffin was lying on the platform, and the dog immediately approached it, and

pointed. His master considered this rather unusual, and his suspicions were aroused when the man accompanying the coffin showed signs of confusion. His replies to the questions concerning the identity of the body, and particulars of the death, were so unsatisfactory that the coffin was opened and found to be packed with partridges.

One day the Paris police were overjoyed at laying their hands on a noted coiner, for whom they had been hunting, but they were unable to find his address. Fortunately, he had a dog with him when arrested. This was let loose in the streets, and the detectives followed the animal to its home, where a large collection of spurious coin and a complete counterfeiting plant were found.

A woman was murdered at Lyons and on top of a cupboard crouched a cat, its eyes staring in terror, which no persuasion could move. Suspicions were to certain persons, who were confronted with the cat, which arched its back, spitting and growling.

Both turned pale, and one attempted to strike the animal, which fled with a yell of terror. Circumstantial evidence was also strong and a confession followed conviction, though, without the cat, they might have gone free.

An ape once identified the murderer of its master in the same manner. It was the only witness of the crime, and was being fed when it was enacted. Clues were few, and no one was strongly suspected; but one day a certain man passed the animal which threw itself against its cage, and showed the most intense rage so long as he was in sight.

Suspicions were aroused, the clue was followed up, and a strong chain of circumstantial evidence adduced, the ape being produced in court at the trial giving evidence by its actions.

Three monkeys showed the most extraordinary intelligence in India when their master was murdered, because he refused to give up a goat he had with him. One seized the goatskin—the goat being killed and skinned to provide a meal—and took it away unnoticed, a second remained near the grave in which the body of their master was hastily buried, and attracted the attention of the headman.

Its signs were unmistakable, so he followed it to the jungle, where two of them being found, all three monkeys then proceeded to the hut of the man who had done the deed, and attacked him tooth and nail.—London Answers.

A Unique Decision. Mark Twain in his romance, "Roughing it," tells how Mr. Hyde, of Washoe Valley, was worsted in a unique law suit, but he does not narrate all the facts. Of those olden golden days of Nevada in the early sixties, I can say with Herodotus, "all of them I saw and part of them I was," and I will attempt to supplement Mark Twain's story with a narration of my own.

More than fifty years have come and gone since that glorious antic of the Nevada bar known as the "Slide mountain ejectment suit," and all of the lawyers of that day have climbed the golden stair, or descended the asbestos ladder as the case might be.

Litigation over the rich silver mines of the Comstock Lode attracted to Nevada a number of brilliant lawyers, and, at the time of which I write, Carson City was full of them, awaiting the arrival of the judges appointed by President Lincoln to preside over the newly-created territorial court.

Before the judges arrived the overland stage brought in the newly-appointed territorial attorney general, "The Honorable Benjamin Buncoe," as he wrote his name on the hotel register. He was dignified in demeanor, he patronized the local lawyers, he swelled like a pouter pigeon on a jamboree, and the boys put up a job on him.

To him appeared one morning Dick Sides, a rancher of Washoe Valley. "I would like to employ you General Buncoe," said Sides, "to assist my local lawyer, Hal Clayton, or rather to take charge of my case and be assisted by him in a trial which is set for to-morrow before Governor Roop, as referee, on an agreed statement of facts, so that there is nothing to do except to argue the case. I have or, until Jim Sturtevant took it away from me, I had, at the foot of the

mountain, one of the finest little ranches in Washoe Valley. Jim had the ranch just above mine on the mountain side. Last week, during that terrible storm, Jim's ranch slid down the mountain right on top of mine, and covered mine several feet deep. He claimed the right to follow his ranch wherever it went, and there he is and I can't get him off. If you can win the case for me I can raise a fee of $500 for you.

General Buncoe agreed to these terms, and the next morning accompanied Sides to the building where court was to be held. Word was passed of what was going on, and the room was crowded. The facts as stated in the pleadings being admitted, Hal Clayton made the opening argument for Dick Sides with a speech that ranged over the history of land titles from Noah down. He was followed by Sandy Baldwin for the defendant. Sandy poured ridicule upon the claim of the plaintiff. He was repeatedly interrupted by Clayton, the lie passed and an oral challenge to a duel with bowie knives was accepted, to take place at the conclusion of the hearing.

At the afternoon session the Honorable Benjamin Buncoe closed the debate with a two hours' speech. Every time he made a point he received vociferous applause and long-continued cheers, which often lasted until the referee threatened to put the entire audience in jail unless order should be maintained. One noisy neighbor of Sides was, by order of the court, manacled and led from the room. Everybody comprehended the joke except Buncoe, who never doubted that the ovation he received was a tribute to his forensic powers.

At the conclusion of the arguments Governor Roop announced that he would take the case under advisement and render his decision after supper.

When the crowd reassembled Clayton came in with his left arm in a sling, and Sandy Baldwin's face was covered with strips of court-plaster. They announced to the court that they had mutually carved each other during recess until honor was satisfied, and were now friends.

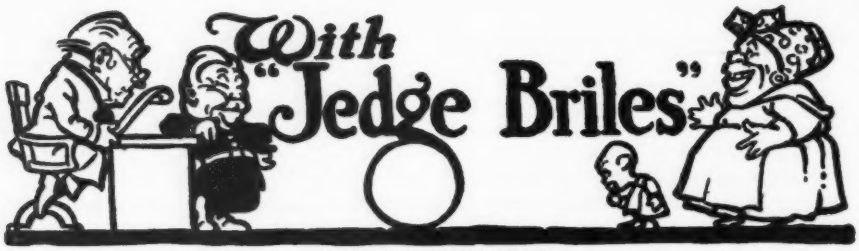
"The court," said Governor Roop, "has given but slight consideration to the authorities cited by counsed. It has preferred to rely upon the great Book which is the fountain of all law. The Bible says that when the Lord had completed the creation of the earth he looked upon his work and pronounced it good. As the Creator He reserved the right to alter His work at His Own will and pleasure, it is not for poor human creatures to vainly wrestle with the decrees of Providence. He saw fit in his infinite wisdom to make some changes in His work in Washoe Valley. He sent a tornado and slid the defendant's ranch on top and left the plaintiff's ranch on the bottom. The judgment of the court is that the plaintiff has lost his ranch by the visitation of God. But this court, in the exercise of its vast equity powers, will do what it can for the unfortunate plaintiff. It will permit him to shovel the defendant's ranch off of his, or dig his own out from under it."

Buncoe at last "tumbled" to the situation. His wrath and amazement were indescribable. And then Dick Sides came forward and said:

"Here, General, you have earned your fee. We boys have had $500 worth of fun out of this. We have made up a purse for that amount. Here's the money."

Buncoe took the sack of coin without a word, went to the overland stage office paid his passage to St. Joe, resigned his district attorneyship, and the next morning was on his way east.

—Thomas Fitch.



BY W. LIVINGSTON LARNED

(Note.—Perhaps the most famous judge in the whole South presided in an Atlanta, Georgia, court, where dozens of cases came up daily. He was lovingly known as "Jedge Briles" by his ever-changing audience, and while it was his stern mission and duty to administer punishment, as well as justice, erring ones were devoted to him just the same. Judge Broyles' court is rich in stories, and it is from this picturesque source that a countless number of thoroughly authentic anecdotes have come. Judge Broyles is now a member of the court of appeals.)

A Visit to the "Chain Gang" Farm. There is as much picturesqueness around a "Chain Gang Farm" as was ever associated with the negro romance of the Old South. Indeed one is very apt to think of the sunnier side of those days "Befo' de Wah," when visiting a camp or farm.

"Jedge Briles," accompanied by a party of friends and state officials, once "looked over" a typical "headquarters" of this kind, where the big business of farming had been put on a scientific scale. It should be realized, at the outset, that the real southern negro makes a very excellent workman when he is properly directed. He is steady, strong, resourceful, and obedient. And when the stern hand of the law puts an extra dash of zest into the composition, good roads and productive crops are the net result.

The spirit of the thing is summed up in the remark of the aged negro who, when asked what he thought of law and courts, made this observation: "Ef we had erbout fo'ty mo' jedges in dis yere state, we'd hab the fines' roads f'um here ter Callyfornus."

The Judge Meets a Local Hackman. After alighting from the train at the small country depot, the party was bustled into a number of hired rigs. Jedge Briles and two friends were driven to the "Farm" by Ned Rasmus Keene, a local philosopher, whose ebony face and yellowish-white hair gave him an almost distinguished appearance. They had jogged comfortably along the dusty clay road for perhaps twenty minutes, when the old negro, without looking at the judge, who sat next to him, remarked:—

"Whut is yo', puffeshionally, Suh?"

The Judge Meets A Hackman

"I am a judge," was the reply.

"Lawd! Lawd! Is yo' a jedge?"

"I'm afraid so, Uncle Ned."

"Kin I speak right out whut I hones' thinks, Jedge?"

"Certainly."

"Well, Suh, don't hit seem lik' bad luck des' nachally follers som' er us? I done lef' Atlanta, an' Macon, an' Griffin', kaze I kept on gettin' mixed up wid jedges an' now, here I is, settin' right next ter one."

The Fraternal Instinct. A mile or so out from the "Farm" the party came up with a "gang" of some fifty or more men at work on the state turnpike. They were attired in the usual striped costumes, and wore the prescribed chains at their feet. A quiet, sallow-complexioned guard, with a rifle resting casually over one arm, squatted in the short grass not far away.

But everyone seemed quite happy and contented. It is characteristic of the

"chain gang" crowd that they sing constantly, while at their various tasks. And these songs are most ingenious at times. For example:—

"Oh-o-o Whuts th' use er me workin' so hard?
I got a wife in de White Folks' yard."

As the carriage in which the judge was seated, came to a halt beside the road, a little group of seven or eight convicts, keeping well to themselves, were shouting away, joyfully, as they plied their picks and shovels. The judge called one over.

"What are you boys doing all together over there?" he inquired.

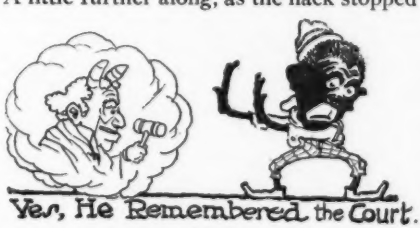
The coal-black prisoner grinned.

"We done fo'm a lodge, Suh," he answered.

"A *lodge!* What do you mean?"

"Dem is us as had troubble wid our wives, Suh. Dat's whut we wuz sent up fer. An' de singin' . . . hit des cum natchal, under de circumstances."

Yes—He Remembered the Court. A little further along, as the hack stopped



again, Jedge Briles thought he caught sight of a familiar face in the gang that was smoothing out a certain stretch of road.

Catching the man's eye, he motioned to him.

"Isn't your name Henry Jackson?" he demanded.

"Yas, Suh."

"You have been in my court in Atlanta more than once, havn't you?"

Now dat yo' mentions hit, peers lik' I has, Jedge."

"I didn't send you here . . . how did *this* happen?"

The negro fidgeted from one foot to the other. At last he managed the reply:—

"Jedge . . . when I felt chicken stealin', mixed wid gin comin' on me, I moved ter de nex' town. Didn't want ter trubble yo' agin' dis session, Jedge."

The Peculiarity of the Lone Prisoner. "That is as fine a body of workers as we've had in many a year," explained the guard, "no trouble since they've been in camp. Work like sixty and eat thataway. They sure do know how to lay road, Judge."

His Honor pointed to a lone negro, working all by himself in a ditch.

"Who is that old fellow?" he inquired

"We call him 'Fitts Jimmy,' you'r Honor."

"Where did he get such a name as that, and why does he wear that blanket over his shoulder, peon fashion?"

"He's a mighty funny darky, Judge. Subject to fits and they come on most any time—apt to have one while he's working the road. We let him have his own way. If Jimmy feels a fit coming on, he walks right over to a shade tree, spreads out the blanket, sits in the middle of it, and has his fit. Then he goes back to his job again. If he has 'em out in the road or on rough ground, it musses up his clothes—grinds dust into them."

How the Law Cured Him. A young convict came singing around the corner of the big, sunny yard, and Jedge Briles had just made himself comfortable in an easy chair on the Big House porch.

"Good morning," said he to the man.

"Good mo'nin!"

"What are you here for?"

"Beatin' up a per-leeceman."

"That is a serious offense. Now aren't you glad you have thought better of it, and intend to turn about?"

"Yas, Suh."

"And when you get out, you will reform?"

"Yas, Suh. I'll done beat up dat per-leeceman what sent me up fo' beatin' him up—atter dat, I'se gwine be a dif'funt niggah, Jedge."

A Legal Reason for His Fall from Grace. A tall, angular yellow convict was shoeing a mule under one of the many sheds, when he was asked to explain what had brought him there, and why, appearing such a quiet, unobtrusive sort of citizen, he should fall from grace.

"You seem to have too much sense to be here with a chain on your leg," commented the Jedge.

"I is so't ob nice, Suh," was the laconic confession.

"But what brought you here?"

"Too ex-pensive lawyer, Jedge."

"A too-expensive lawyer, how do you make that out?"

"He wanted fo'teen mo' dollahs fer perjury in my case, fo' ter free me, Jedge, dan I happen ter hab at de time."

His Opinion of Local Courts. Uncle Peter Henderson, one of the white superintendents of the Farm, boasted the longest whiskers in the county, and had a reputation for never giving up when a convict happened to get away from him on the road.

"Pretty progressive courts you folks have in this neighborhood?" he was asked.

"Co'ts—Cot's!" exclaimed the old man, "Oh, yes, we got them, all right. But as fer properly dispensing of th' law, that's somethin' else, agin. If fish is bitin' an' th' day happens ter be extry fine, yore case is discharged an yore a

When the Court Fished.

free man, almos' befo' th' co't has opened. But ef hits rainy, and there aint been a bass bite fer a week, even a special dispensation uv th' Lo'd wouldn't git yo' off free."

Original "Hounds of th' Law." As fine a pack of bloodhounds as ever sniffed soil, were lying in the courtyard.

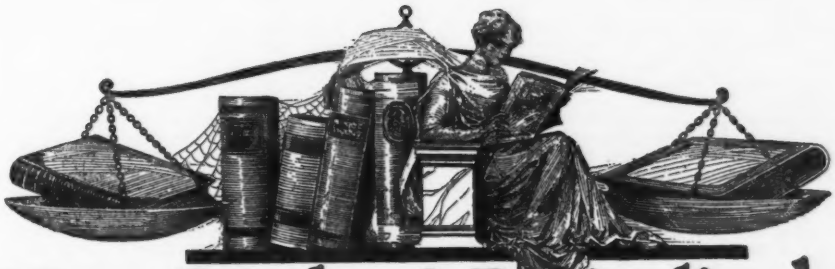
The visiting party looked at them with obvious admiration, for hounds have their ordained duty in this busy life, and a Georgia hound has mighty fine eyes when he looks at somebody he likes.

"Fine dogs you got there," said a member of the party.

"Yep, pow'ful nice stock," was the reply.

"If a convict gets away I suppose they could track him down in short order."

"That hound," went on the proud owner, pointing to a sad-eyed, lop-eared fellow in the foreground, "that hound could lo-cate a niggah, Suh, if you was to give him a year's start and let him bag his foots in quicksilver. There's only *one* trouble with him, Jedge, he sho' does love black meat, once he gets his teeth sot in it."



New Books & Periodicals

A good book praises itself.—German Proverb.

"Leading Cases on American Constitutional Law." By Lawrence B. Evans. (Callaghan & Co., Chicago, 1916.) pp. xxix+445.

Neither the simple title nor the modest preface of this book indicates how much more of the scholarship of the lawyer there is in this collection of cases than is usually to be found in collections made primarily for classes in colleges, nor does it disclose the peculiar qualifications of the author for the work. We are told simply that it is a concise work designed especially for students in law schools where the amount of time given to the subject does not warrant the use of the larger case books, and for the needs of college classes in Constitutional History; and that Dr. Evans, now a member of the Massachusetts bar, was formerly head of the Department of History and Public Law at Tufts College, is not mentioned. With his whole career in mind one can understand how well this collection of cases will meet the requirements of two classes of students,—first, students in law schools where the men are encouraged to supplement the work of the class room by outside reading, by reason of the numerous references to other cases which have been included in the notes; and, second, in university classes in Government, by reason of the references to many monographs and treatises bearing upon the historical as well as the legal aspects of the topics treated.

Two excellent examples of the annotation for the first purpose are the discussion of the decisions on the regulation of rates, pp. 425–427, and of the meaning of the equal protection of the laws, pp. 368, 369; and, as two of the best notes for the second purpose, attention may be directed to the quotations from publicists on the inherent powers of the Federal Government, pp. 34, 35, and exclusion of aliens, pp. 40, 41. In running over the Table of Cases one finds names familiar in the progress of our government by the courts as the arbiters finally of the validity of our aspirations; for, even in a collection brought within relatively so small a compass as this, there is room for these great causes which will direct our destinies, so long as we have by our machinery of keeping legislation within the limitations of the Constitution, more clearly than any people in history, a government of law, not of men. The dangers of having the judges act in accordance with the politics of the hour is shown in the slavery cases, pp. 93, 94; but that we can feel assurance that the rights of men are revealed anew to our masters on the bench is shown by the recognition of the duties imposed upon those whose calling is affected with a public interest, pp. 420, 421.

BRUCE WYMAN.

"Commentaries on the Laws of England." By Sir William Blackstone, Kt. Edited by William Carey Jones. (Bancroft-Whitney Company, San Francisco.) 2 vols. Students' Edition, $9.00; De Luxe Edition, $15.00.

This is the latest and best presentation of the law's great classic—a work which has delighted generations of lawyers, and has been endowed, as no other legal treatise, with literary immortality.

These volumes are based on Professor Hammond's painstaking and scholarly edition, retaining his text and monographic notes, except those devoted to the now unnecessary vindication of the Commentaries. In their place is a body of annotation intended to show important modern modifications of or innovations on the common law, besides extracts from the writings of acknowledged authorities on the history and theory as well as the practice of the law.

The student will find this edition an enticing gateway through which to enter upon his heritage of the common law. The practitioner will find it a delightful means of retracing former paths and revisiting ancient landmarks. To both, the work will ever possess the charm of perennial interest.

"Shorthand Reporters." Edited by Gordon L. Elliott. Second Edition, 1916. (National Shorthand Reporters' Association, La Porte, Ind.) $2.50, prepaid.

This volume is a digest of the statutes and legal decisions of the various states relating

to official stenographers and their reports. The law on the subject is almost entirely a matter of statutory construction. There are also chapters of especial interest to practising attorneys on the status, force, and effect of the reports made by court stenographers.

The work has been prepared not only as a handbook and reference work for shorthand reporters, but as an aid to attorneys in matters relating to the preparation of the record in the trial of cases, and the proper certification and preparation of bills of exceptions; the use of shorthand notes and transcripts thereof on second trials; use of transcripts in arguments to the jury; and the remedy by new trial or otherwise when it is impossible to procure transcript because of casualty, etc.

Cases are cited from all of the states and from the Federal courts, and the entire subject has been covered in a thorough, comprehensive, and accurate manner.

"Why We Punctuate; or Reason Versus Rule in the Use of Marks." By William Livingston Klein. Revised edition. (The Lancet Pub. Co., Minneapolis, Minn.) pp. xvi+224. $1.25, net, postpaid.

This is a revised and entirely rewritten edition of Mr. Klein's work, the first appearance of which met with much commendation. He has aimed to show that the sense relations between groups of words are a large factor in determining the meaning of language, and that a mark of punctuation, or even its absence, sometimes determines a sense relation, and at other times only serves readily to point it out. Indeed, the author has gone further than most, if not all, writers on grammar and rhetoric in the consideration of those simple, fine, and beautiful sense relations in language that constitute literary form, give added charm to literary thought, and exhibit the exact meanings that are indispensable in business language. The value of his work arises from the fact that he sets forth reasons instead of rules for the use of punctuation marks. We venture to predict that Mr. Klein's treatise will become increasingly popular.

"Child Labor Legislation in the United States." By Helen L. Sumner and Ella A. Merritt. (U. S. Department of Labor, Children's Bureau, Washington, D. C.)

There has just been made available to anyone who is interested enough to ask for it a compilation of the exact terms of all the laws enacted up to January 1, 1916, relating to any form of child labor in the United States, Alaska, Hawaii, the Philippines, and Porto Rico. This new publication has been issued by the Children's Bureau of the United States Department of Labor under the title "Child Labor Legislation in the United States."

Decisions of Federal courts and of the higher state courts are included in connection with the laws to which they refer. "The constitutionality of child labor laws appears to have been finally and definitely established by the recent decisions of the United States Supreme Court upholding the Illinois law prohibiting employment under sixteen years of age in trades and occupations classified by the legislature as dangerous and injurious.

The book contains a series of analytical tables which not only set forth concisely the terms of the law and provisions for enforcement in each state, but show at a glance the variations of the laws in the different states.

These analytical tables with the general introduction can be had apart from the full text of the laws, and for further convenience the full text of each state law may also be secured separately.

"Community Development." By Frank Farrington, 1915. (Ronald Press Co., 20 Vesey St., New York.) 257 pp. $1.50, postpaid.

When it is considered that over 50 per cent of the population of the United States live in communities of 2,500 and less, building up the small town looms as a subject of vital importance. This question is well answered in "Community Development" by Frank Farrington. Of the seven village conditions which the ideal community should have, Mr. Farrington names organized community spirit as one of the most important. Organization —getting together to accomplish something— is the theme of the whole book. How to organize a live commercial club is fully explained; and a suggested constitution and by-laws are even given. In any organization there is usually found one man who is the dominating figure in pushing through business which should be done. The author states the qualifications of the community leader, and tells how he can get co-operation in organizing a movement to better the town.

What women are doing and can do to improve the town; how the young people can be developed into good citizens; the opportunities of the minister, the physician, the lawyer, and the editor in building up the town, —are several of the questions discussed in detail.

"Community Development" will be of special help to secretaries of commercial clubs, progressive merchants who see that improving the town means more business for them, Y. M. C. A. secretaries, ministers, women interested in social work, and every individual who wants to make his town a better one to live in.

"Chamberlayne's Modern Law of Evidence." Vol. 5, thick paper, $7.00, thin paper, $7.50.

"Crawford, Negotiable Instruments Law, 4th ed. $3.50.

"Crawford's Oklahoma Digest." 2 vols. Buckram, $15.00.

"Hepburn, Cases on Torts." 1 vol. $6.00.

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"Uniform Workmen's Compensation Act."—1 American Bar Association Journal, 416.

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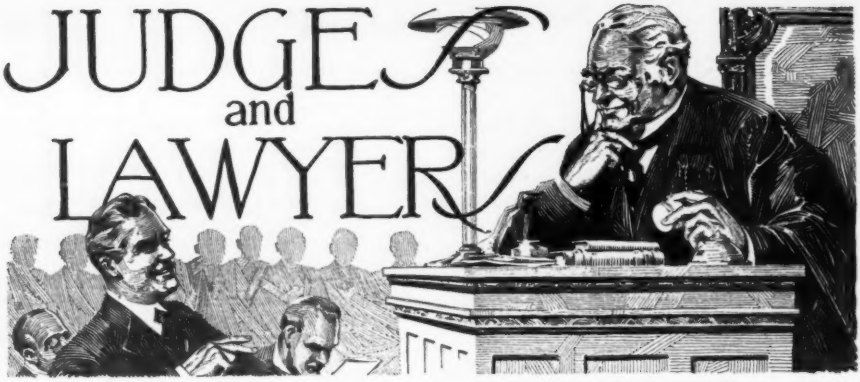
Reading Declaration of Independence from Balcony of Old State House, Boston, on July 4th.

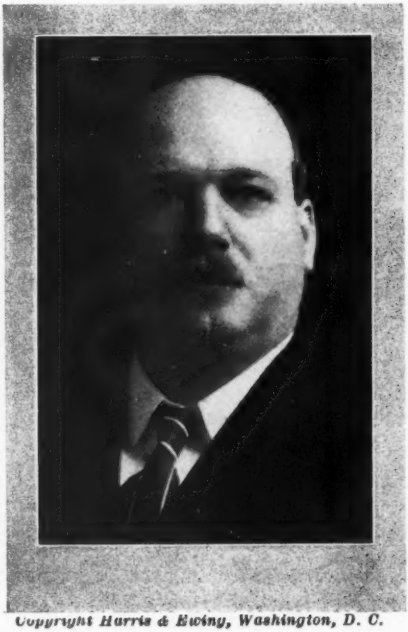


A Record of Bench and Bar

Hon. Winfield S. Hammond

Recently Governor of Minnesota

WINFIELD Scott Hammond was born fifty-three years ago in the state of Massachusetts, and spent in New England the years of his childhood and his young manhood. He was graduated from Dartmouth College in 1884. When he attained his majority he went to the great state in which he spent the mature years of his life. He brought with him the culture and conservatism of New England to aid him in his work in the great progressive northwest section of the United States. From September, 1884, to June, 1885, he was principal of the high school in Mankato, Minnesota, and from 1885 to 1890 was superintendent of schools in Madelia, Minnesota. Mr. Hammond in the meantime had studied law, and in 1891 was admitted to the bar. He practised for the next five years at Madelia, and then moved to St. James, Minnesota, which had since been his home. In 1892 he was Democratic candidate for Congress, and from 1895 to 1896 was county attorney of Watonwan county. He held the same office from 1900 to 1905. He was a member of the Minnesota State Bar Association. From 1898 to 1906 Mr. Hammond was a member of the Minnesota state board of directors of normal schools, and from 1898 to 1903 he was president of the board of Education of St. James. He was a member of the sixtieth to sixty-third Congresses, 1907 to 1915, representing the second Minnesota district. He was the eighteenth governor of Minnesota, and was inaugurated a year ago.



He was elected on the Democratic ticket.

His sudden death was due to a stroke of apoplexy, which he suffered while on a southern trip. He died before physicians could arrive.

His successor in Congress, Honorable Franklin F. Ellsworth, in the tribute which he paid him on the floor of the House of Representatives, remarked:

"As a neighbor he was painstaking, unselfish, generous to a fault; as a man, a patriot, and a respecter of the truth; as a citizen, always loyal, patriotic, and public-spirited; a lawyer who always tried causes upon their merits, and not a stickler for technicalities. As an official he was ever zealous to perform the duties of his public trust in any and every position which he held. As a political antagonist he was a man whose indignation, once aroused, went out against the opposition and made them feel the very power of his personality and the wisdom of his forceful eloquence; and, when the campaign was over and the turmoil was cleared away, a man who could clasp you by the hand and be the same kind, considerate neighbor that he was in the beginning.

"The dominating characteristic, though, was his modesty, and of that particularity I want to speak. He was modest to a fault. The last man in the little town of St. James, a little city of 2,000 people, in the southern part of the state of Minnesota, to assert himself on any public occasion, no matter whether he occupied the humble position of city attorney in the little city or the attorney of the little county, a small county in that part of the state, or congressman of his district or governor of the State, upon any occasion—Winfield Scott Hammond, if there was a public occasion in the little city or village, was found sitting in the rear with his hands folded, speculating upon some perhaps little inconsiderable part of the event. He was the kind of a man that if you pointed to the sturdy oak, instead of expostulating on its great branches and its rugged roots which protruded from the ground, he would see in it the little tentacles or fibers at the end which took the sap of life; he would see the veins that took the sap into the twigs and leaves and stems—the little things that went to make up the great whole; and such was his life, a man of modest environment, of unpretentious thought, who brought the small things together to make up the great things which made the life he lived.

"If I may be permitted time, I will quote one brief sentence, the author of which was a judge and a friend of the late Winfield Scott Hammond, whom he greatly admired. I have often heard him quote it. I do not quote it with any reflection upon its sentiment so far as theology is concerned, but as it reflects his ideal of the kindnesses of everyday life. It is:

" 'A single dog waived from the summit of St. Bernard bearing a message of hope and sympathy to the weary and benighted is a better exemplar of the teachings of mankind than is the founder of any scholastic theology which can only mystify the sour or paralyze the intellect.' "

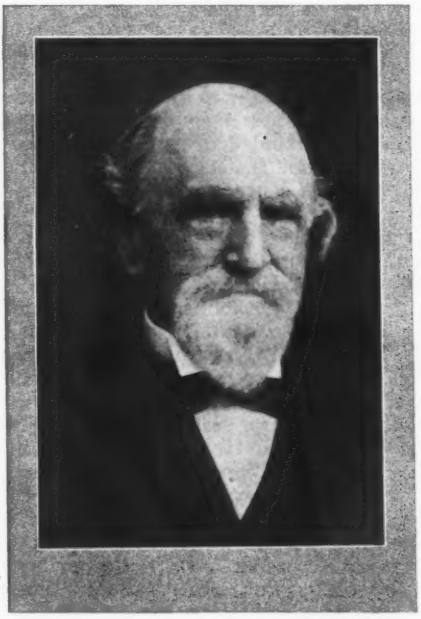
Mr. Speaker Clark related this interesting incident concerning his first meeting with Mr. Hammond:

"Accident determines very largely our associates. Accident first brought me into close communion with Governor Hammond, on account of a very gracious act which he performed. In the old time, when we drew for seats, I was extremely lucky. The first House that I served in I was the first Democrat to draw a seat, and in the next two Houses that I served in I drew high enough up to get within the central block of seats. The next House I served in I was again the first Democrat to draw a seat. The sixth time, coming up on the street car the morning the House was to be organized, I told my wife that on the doctrine of probabilities I ought to be the last member in the House to draw a seat, and I was next to the last. So, on the sixth occasion when Mr. Hammond was here the first time, I had to take a seat away back yonder on the outside rim. He drew so high up that he selected the seat that is right where the end of the table now is on the Democratic side, and, by the way, that was the best seat in the House. He came to me,—I had never seen him or been introduced to him,—and he said, "You have a great deal to do here and I

am a new member and will not have very much to do, and I want to swap seats with you." That was, as I said a gracious and kindly act, and I never forgot it."

"He was an intellectual," states an editorial writer in the Minneapolis Journal. "His mind had the breadth of vision and the grasp of detail which are so rarely joined in one man, but which are so necessary for him who well administers the affairs of a great commonwealth."

A Lawyer Poet.



C. Augustus Haviland, poet, philosopher, lawyer, and business man, for many years has been prominent in affairs in Brooklyn. Mr. Haviland was born in that city November 23, 1832, and was educated in the public schools. In 1847 he went to Poughkeepsie, where he studied law with Dodge & Campbell and Jackson & Williamson. He was admitted to the bar in 1854, and for three years practised law in that city. He then went to Iowa, and in 1868 to Chicago. In 1876 Mr. Haviland returned to Brooklyn and established with his sons the law and real estate firm of Haviland & Sons, in Brooklyn. Mr. Haviland always has taken a keen interest in all matters of civic and national interest. He is a poet of some note, and a volume of his verses, under the title of "A Lawyer's Idle Hours," has been published. These poems, the product of the idle hours of a half century, were written under the *nom de plume* of Frank Myrtle. In 1902 they were gathered into an attractive volume.

It has been Mr. Haviland's custom to commemorate his recurring birthdays with a poem. The one entitled "Reveries at Four Score" is as follows:

When four score years have run their race
And man doth still retain his place
Among his fellows—good and kind—
With sturdy limbs, unclouded mind,
And all that makes for comfort here,
With bounteous blessings and good cheer;
Then praises unto Him who guides
Our destiny, whate'er betides.

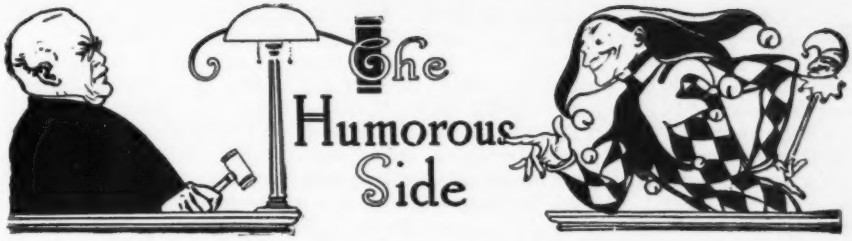
There's mystery—why be it so?
That some should stay while others go?
That faithful ones, who falter not,
Are early borne away—for what?
Is it that in the far away
Are other fields for manly play?
That those who pass beyond this sphere,
May *there* do better work than here?

Is it for this the swelling tide
Bears many down the river wide?
Is it for this we build and plan
On earth, through all life's feeble span?
Is it that some may longer stay
With fellow men, to lead the way,
And mark the path mankind should tread
Before commingling with the dead?

'Tis well—all well—that it be so,
That some should stay while others go,
That work which idle hands might do
May yet be done by those who're true.

Though task seems great, yet none should say:
"My work is done"—while on the way
His fellow men for justice plead,
When shackles bind and hearts still bleed.

Mr. Haviland's verses express a sunny philosophy and their perusal tends to promote better citizenship.



Keep your face always towards the sunshine, and the shadows will fall behind.—M. B Whitman.

Nine Points of the Law. "Blessed are the meek, for they shall inherit the earth," quoted the good deacon.

"They may inherit it, all right," said the backslider, "but they never seem to take possession."—Judge.

Expert Opinion. Two young women were engaged in a rather heated argument as to the meaning of "circumstantial evidence," when old Zeb, their negro servant, poked his woolly head in at the door. He was immediately besieged to give his opinion on the matter in question.

"De way Ah und'tand it, f'um de way it's been 'splained to me," announced the old man, "circumstantial evidence is de fedders dat you leaves lyin' 'round!

His Favorite. When a girl asked Mark Twain his favorite motto he promptly answered, "Not Guilty!"

No Hazards. Frank Dempsey walked into a local accident insurance company one day recently and asked to be insured.

"Are you engaged in any occupation in which you are exposed to any element of danger?" asked the secretary.

"Not in the least," Frank responded with his broad, pleasing brogue.

"Would your business ever require you to be where there were excited crowds—for instance, at a riot or a fire?

"Never, sir."

"Does you business throw you in contact with the criminal classes?"

"Never, sir."

"What is your business, Mr. Dempsey, may I ask?"

"I am a policeman," Frank answered, without the twitch of a muscle.—St. Louis Globe-Democrat.

A Suspicious Magistrate. A Connecticut man tells of the case of one Silas Ketchum, the champion liar of a village in that state.

It appears that one day Si was arrested and brought before the local justice for chicken stealing.

"Jedge, your Honor," he said, "I plead guilty on the advice of my lawyer."

But the Justice gazed at the noted prevaricator and rubbed his chin dubiously.

"I dunno," he said, "I dunno. I guess —well, Si,—I guess I'll have to have more evidence before I sentence ye."

Used to It. The man had been haled before the magistrate on some trivial charge.

"Let me see," said the judge. "I know you. Are you not the man who was married in a cage of man-eating lions?"

"Yes, your Honor," replied the culprit, "I am the man."

"Exciting, wasn't it?" continued the justice.

"Well," said the man judicially, "it was then; it wouldn't be now."—Ladies Home Journal.

Bearing Better Fruit. "I've looked up your family tree," said the genealogist; "but I doubt if you will be pleased with it. Your great-great-grandfather was hanged for murder; your great-grandfather was imprisoned for robbery; your

grandfather was tarred and feathered for beating his wife. That's not a very good record, is it?"

"I should say it is," replied the other emphatically. "It shows the family is getting better with each generation. I'm an improvement on the entire bunch—never been in jail yet. Let me have those records—I'm proud of 'em."—Boston Transcript.

Where the Plan Failed. A white man walking along a road where an old colored man was whitewashing a fence noticed that the brush he was using contained very few bristles.

"Look here, Rastus," exclaimed the man, pausing and looking at the operation, "why don't you get a brush with more bristles in it?"

"What fo' Mistah Smith, what fo'?" returned Rastus, glancing from the fence to his questioner.

"What for?" expressively replied Mr. Smith. "Why, if you had a brush with more bristles in it you could do twice as much work."

"Dat's all right, Mistah Smith," said Rastus, negatively shaking his head, "but I hain't got twice as much work to do."—Philadelphia Telegraph.

Changed His Mind. A Louisville negro was caught with a number of hides in his possession, for which he could not reasonably account, and was brought into court charged with stealing.

"Guilty or not guilty?" thundered the judge.

"Not guilty," emphatically responded the negro.

"Then how do you account for the fact that you were in possession of two $5 bills when you were arrested, although you are known to have been unemployed for a year?" demanded his Honor.

"Jes' let me relate the circumstances, Mr. Jedge"—

"And that three hides, of which you claim to know nothing, were found hidden in your cellar?"

"I dunno, Jedge, but"—

"And that you were seen coming out of the tannery with three more?"

The negro scratched his head in silence for a minute, then blurted out:

"Lookey here, Mr. Jedge, if you is gwine to git so troublesome and so 'quisitive 'bout this little matter, I's jest pintedly gwine ter take back what I said 'bout not guilty an' make it guilty."—National Monthly.

The Vagarious Law. I was sitting in the smoking room compartment next to two men who were discussing the advisability of buying themselves a drink. One of them called the porter and asked him if it was possible to purchase liquor in that part of the country."

"Yes, sah," he replied, "you kin get it here in New Mexico, but not in Arizona."

So the two began to plan what they would have. After a number of tentative suggestions, they decided on a pair of highballs.

"Porter," ordered the one who had first brought up the subject, "bring us two highballs—with ginger ale."

"Can't have it," replied the porter. "It's against the law, sah."

"Why, didn't you just tell me a moment ago that we could?"

"Yes, I told you that, but while y'all was makin' up yo' minds we done crossed the line into Arizona."—Baltimore American.

His Official Capacity. William Collier and a couple of actors were dining in a hotel café when Collier directed his companions' attention to a very dapper-looking man with a suspiciously red nose, who had just passed.

"A very prominent member of the Larchmont yacht club," announced Collier, with a grave air.

"Is that so?" asked one of the players, who, as Collier knows, always evinces a strong interest in the doings of society.

"What is his official capacity?"

"About 3 gallons, I think," said Collier.—The Argonaut.

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